

ECHOFLEX SOLUTIONS, INC. TERMS AND CONDITIONS AND WARRANTY

1. Applicability.

(a) These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") and services ("Services") by Echoflex Solutions, Inc. ("Echoflex") to the buyer named on the purchase order ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying sales order confirmation (the "Sales Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

(c) Notwithstanding anything to the contrary contained in this Agreement, Echoflex may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

(d) Once a Sales Confirmation has been issued by Echoflex to the Buyer, these Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party for that specific Sales Confirmation.

(e) The obligations of Echoflex in this Agreement are subject to the express condition precedent that Buyer shall fully perform its obligations under this Agreement, subject to any waiver by Echoflex which shall be at its sole discretion.

2. Delivery of Goods and Performance of Services.

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Echoflex shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Echoflex shall deliver the Goods to location specified on the Sales Confirmation (the "Delivery Point") using Echoflex's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 24 hours of Echoflex's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point.

(c) Echoflex may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Echoflex's notice that the Goods have been delivered at the Delivery Point, or if Echoflex is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations then: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered, and (iii) Echoflex may, at its sole discretion, store the Goods and any and all costs associated with such storage, including taxes or insurance, shall be immediately paid by Buyer.

(e) Echoflex shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.

(f) Claims for shortage or damaged goods must be made within ten (10) days of receipt by Buyer. All claims for loss or damage in transit must be made by the consignee directly to the carrier. Echoflex will render every aid and assistance in the presentation and enforcement of such claims without waiver of our rights to have compliance with the terms of payment of our invoices.

(g) With respect to the Services, Buyer shall (i) cooperate with Echoflex in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Echoflex, for the purposes of performing the Services; (ii) respond promptly to any Echoflex request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Echoflex to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Echoflex may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Non-Delivery.

(a) The quantity of any instalment of Goods as recorded by Echoflex on dispatch from Echoflex's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) Echoflex shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Echoflex of the non-delivery within 5 business days of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Echoflex for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for the delivery of Non-conforming Goods.

4. Non-Warranty Returns. Goods returned without Echoflex's written permission will not be accepted. Goods returned for credit must be in accordance with this Agreement. Goods must be unused, in original cartons and in saleable condition, subject to Echoflex's quality control and test inspection. Restocking charges of \$25 or 25% of invoice (whichever is greater) for normally stocked items and \$75 or 75% of invoice for factory pre-commissioned systems will be deducted from the credit. Returns for warranty work will be in accordance with Echoflex's established warranty procedures. In no case will permission be granted to return specially-modified or custom Goods, or merchandise invoiced more than six (6) months prior to date of Customer's return request.

5. Shipping Terms. Delivery of the Goods shall be made FOB Echoflex's warehouse in Squamish, BC or factory in Middleton, WI, USA.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Echoflex a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the British Columbia Personal Property Security Act.

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7. **Buyer's Acts or Omissions.** If Echoflex's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants or employees, Echoflex shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.
8. **Inspection and Rejection of Non-Conforming Goods.**
- (a) Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Echoflex in writing of any Non-conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Echoflex. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies Echoflex of any Non-Conforming Goods, Echoflex shall, in its sole discretion, replace such Non-Conforming Goods with conforming Goods. Buyer shall ship, at its expense and risk of loss, the Non-Conforming Goods to Echoflex's facility located at 38924 Queensway Units #1 and #2, Squamish, British Columbia, Canada V8B 0K8 or Echoflex's facility located at 3031 Pleasant View Road, Middleton WI, 53562, USA, as specified by Echoflex. If Echoflex exercises its option to replace Non-Conforming Goods, Echoflex shall ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Non-Conforming Goods.
9. **Price.** All Prices are exclusive of all harmonized sales tax, goods and services tax, sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Echoflex's income, revenues, gross receipts, personnel or real or personal property or other assets. All prices are subject to change without notice.
10. **Payment Terms and Cancellation.**
- (a) Buyer shall pay all invoiced amounts due to Echoflex within 30 days from the date of Echoflex's invoice. Buyer shall make all payments hereunder in United States dollars, unless otherwise agreed between Echoflex and Buyer.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Echoflex for all costs incurred in collecting any late payments, including, without limitation, legal fees. In addition to all other remedies available under these Terms or at law (which Echoflex does not waive by the exercise of any rights hereunder), Echoflex shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Echoflex, whether relating to Echoflex's breach, bankruptcy or otherwise.
- (d) If Echoflex in good faith doubts Customer's ability or willingness to pay, Echoflex may in its discretion complete its performance of this contract upon a cash in advance basis or make deliveries only upon a C.O.D. basis or suspend all or part of its performance here under. All payments are applied to the oldest outstanding invoice.
- (e) If Buyer cancels all or any portion of the Goods or Services prior to shipment or scheduled service date, Buyer shall be liable to Echoflex for a cancellation charge equal to Echoflex's actual costs incurred in connection with that portion of the Goods or Services that is cancelled, including, without limitation, labor and materials.
11. **Limited Warranty.**
- (a) Echoflex warrants to Buyer that for a period of 5 years from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will materially conform to the specifications set forth in Echoflex's published specifications in effect as of the date of shipment and will be free from defects in material and workmanship.
- (b) Echoflex warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- (c) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 10(a) AND 10(b), ECHOFLEX MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; OR (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- (d) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 10(a). For the avoidance of doubt, **ECHOFLEX MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) CONDITION OR WARRANTY OF MERCHANTABILITY; (b) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) CONDITION OR WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**
- (e) Echoflex shall not be liable for a breach of the warranties set forth in Section 10(a) and Section 10(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Echoflex within 5 days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Echoflex is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 10(a) to examine such Goods and Buyer (if requested to do so by Echoflex) returns such Goods to Echoflex's place of business at Echoflex's cost for the examination to take place there; and (iii) Echoflex reasonably verifies Buyer's claim that the Goods or Services are defective.
- (f) Echoflex shall not be liable for a breach of the warranty set forth in Section 10(a) or Section 10(b) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Echoflex's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Echoflex.
- (g) Subject to Section 10(e) and Section 10(f) above, with respect to any such Goods during the Warranty Period, Echoflex shall, in its sole discretion, either repair or replace such Goods (or the defective part). Buyer acknowledges and agrees that the provisions of the Warranty are the sole and exclusive remedy available to the Buyer for any defective Goods.
- (h) Subject to Section 10(e) and Section 10(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 10(b), Echoflex shall, in its sole discretion, repair or re-perform the applicable Services.
- (i) **THE REMEDIES SET FORTH IN SECTION 10(g) and SECTION 10(h) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND ECHOFLEX'S**

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ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 10(a) and SECTION 10(b), RESPECTIVELY.

12. Limitation of Liability.

(a) IN NO EVENT SHALL ECHOFLEX BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL ECHOFLEX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO ECHOFLEX FOR THE GOODS AND SERVICES SOLD HEREUNDER.

(c) The limitation of liability set forth in Section 11(b) shall not apply to (i) liability resulting from Echoflex's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Echoflex's acts or omissions.

13. Compliance with Law. Buyer shall comply with all applicable international, national, provincial and local laws and ordinances and all lawful orders, standards, rules and regulations thereunder, now in effect or as hereinafter amended. Buyer shall comply with all export and import laws of all countries involved in the sale of Goods under this Agreement. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Echoflex may cancel this sale of Goods if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods. Echoflex may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

14. Termination. In addition to any remedies that may be provided under these Terms, Echoflex may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver. No waiver by Echoflex of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by an authorized representative of Echoflex. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information. All non-public, confidential or proprietary information of Echoflex, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Echoflex to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Echoflex in writing. Upon Echoflex's request, Buyer shall promptly return all document and other materials received from Echoflex. Echoflex shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

17. Force Majeure. Echoflex shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Echoflex including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Echoflex. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

21. Governing Law and Submission to Jurisdiction. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of British Columbia and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of British Columbia. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the courts of British Columbia in each case located in the City of Vancouver, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

22. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

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23. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Use of Image. Buyer agrees and consents to allow Echoflex to make reference to and/or use: (i) the installed Echoflex Goods, (ii) the location of the installed Goods, (iii) Buyer's respective logo(s), trademark(s) or any other graphical representation of Buyer's use of the Echoflex Goods, and/or (iv) photographs of the installed Echoflex Goods in any material of any kind used or produced by or at the direction of Echoflex, without the prior written consent of Buyer; provided, however, that Echoflex may not, without prior written consent, do any of the foregoing in a manner that implies endorsement by Buyer.

25. Change Orders. Any changes in engineering drawings, specifications, or in other terms of manufacture, assembly or shipment, requested by Buyer, must be in writing and approved by Echoflex. If any such change by Buyer causes an increase in the cost of, or in the time required for performance of, any part of the contract, then Echoflex shall make a reasonable adjustment to the price of the Goods or Services. Goods or Services ordered which differ in any way from Echoflex's standard catalog items will require drawings approved in writing by the Buyer. When drawings are approved, they shall take precedence over all other written or verbal instructions.