

## Nighthawk Terms and Conditions of Sale - US

### 1. Definitions

In this Contract:

- (a) "Company" means AMI Investments, LLC dba Nighthawk, and each of its affiliates making sales of Goods to Buyer.
- (b) "Buyer" means the person, firm or company to whom the quotation is addressed or by which the Order is placed.
- (c) "Goods" means the articles or things or any of them described in the Order.
- (d) "Order" means the order placed by the Buyer and accepted by Company for the supply of the Goods.
- (e) "Contract" means the Terms and Conditions and each Order for the sale of Goods.
- (f) "Terms and Conditions" means these terms and conditions of sale.

### 2. Entire Agreement

Buyer agrees that all sales of Goods by Company to Buyer are governed by these Terms and Conditions, which supersede any other or inconsistent terms of Buyer. Buyer acknowledges that these Terms and Conditions are subject to change from time to time and the parties agree that each Order will be governed by the version of Terms and Conditions available online at [www.Nighthawkcontrol.com](http://www.Nighthawkcontrol.com) at the time of acceptance by Company of such Order. This Contract constitutes the entire agreement between the parties with respect to Goods. All references by Company 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 or inconsistent terms of Buyer, no modification, amendment or waiver to this Contract and no cancellation, change or return of any Order under this Contract will be binding on Company until agreed in writing by Company's authorized representative. Buyer may not rely on any representation, promise or term not set forth herein and Company expressly objects to and rejects all terms not contained in this Contract. Company'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.

### 3. Order

Quotations are given and orders are accepted on the following terms and conditions which shall prevail over any terms and conditions proposed by the Buyer unless otherwise agreed in writing. Where the Company is bound by any statutory obligation e.g. conditions of carriage, the Buyer in accepting these conditions becomes bound by the same statutory obligations.

### 4. Quotations

Quotations may be varied or withdrawn by the Company at any time and unless otherwise specified quotations shall be deemed to be withdrawn automatically thirty (30) days from their date of issue. There will be no binding contract until the Order is accepted in writing by the Company.

### 5. Prices

- (a) The Buyer agrees to pay the Company for any loss or extra cost incurred by the company through any request or instruction or lack of instruction on the part of the Buyer, its employees or contractors.
- (b) Transportation charges, packing and shipping fees (if applicable), and all other costs of shipment and delivery shall be the responsibility of the Buyer and shall be paid in accordance with these terms and conditions.
- (c) All documents/certificates/tests additional to invoices will be charged at cost.

### 6. Payment

- (a) All invoices must be paid within ten (10) days from the issue date of the invoice. If payment of any sum payable to the Company is not made on or before the due date the Company shall be entitled to charge interest thereafter on such sum at the greater of twelve percent (12%) per annum, or five percent (5%) per annum above the current prime rate as published in the Wall Street Journal, such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month.
- (b) If payment is in default for any Goods supplied and invoiced, the Company reserves the right to suspend manufacture or delivery of any further Goods related to the Contract and to terminate any other Contract with the Buyer without prejudice to any other remedy the Company may have.
- (c) If the Buyer becomes bankrupt or insolvent, or assigns any assets for the benefit of the Buyer's creditors, or a bankruptcy proceeding is initiated by or against the Buyer or a receiver is appointed for any of the Buyer's assets, the Company may suspend its performance under the Contract without prejudice to any other rights which the Company may have.
- (d) Buyer may suspend deliveries for a period not to exceed three (3) months upon giving the Company ninety (90) days advance notice in writing.

### 7. Delivery and Storage

- (a) The period quoted for delivery shall be calculated from the date of receipt by the Company of all instructions and information necessary for the execution of the work but time is not of the essence of the Contract. No liability shall attach to the Company for any delay for any direct, contingent or consequential loss or damage arising from such delay.
- (b) If owing to war, strikes, difficulty in obtaining raw materials, or causes of any nature beyond its control, the Company is unable to deliver any part of an Order, the Company shall have the right (on giving notice in writing) to cancel the undelivered balance of the Order and the Buyer shall not have any claim for or arising out of such inability, delay or cancellation.
- (c) Where delivery is by instalments, each delivery shall be considered as a separate part of the Order and a failure of any delivery shall not vitiate the Order as to the others.

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- (d) If the Buyer shall request the Company to delay delivery of the Goods or shall fail to give instructions for their delivery, the Company shall be entitled to make a charge for storage and insurance but payment shall nevertheless be due at the end of the month in which the Goods are available for delivery.
- (e) Unless otherwise explicitly provided, this quote is for the delivery of Goods from the Company to the Buyer at the Company's facility. If Buyer requests, the Company may agree to arrange for delivery on Buyer's behalf. In such case, the Company shall use reasonable efforts to choose a shipper and the Buyer shall pay the Company a shipping charge in accordance with the payment terms of this contract. Regardless of which party arranges for shipping and delivery, risk of loss with respect to the Goods passes to the Buyer at the time that the Company transfers the Goods to the shipper. Regardless of which party arranges for shipping, title to the Goods passes to the Buyer at the time the Buyer pays for the Goods and the Company's shipping charges, if any.

### **8. Limited Warranty**

- (a) All Goods supplied by the Company are guaranteed against defects due to faulty workmanship and material for a period of two (2) years from date of delivery. This warranty extends only to the original purchaser of Goods from the Company.
- (b) The Company will repair or replace (at its discretion) free of charge any defective items that have been properly stored, installed, used and maintained and have not been damaged in transit, provided such items are returned to the Company without further damage, within fourteen (14) days of the discovery of the alleged defect, and subject to confirmation of the defect by the Company's inspection. Buyer is responsible for the cost of shipping Goods to the Company for warranty claims and for the cost of shipping repaired or replaced Goods to the Buyer. In repairing or replacing the defective Goods, the Company may use functionally equivalent reconditioned, refurbished, remanufactured, pre-owned, or new parts and products. Goods returned to the Company and found to be outside the scope of the warranty will be returned to the Buyer at Buyer's expense and subject to a charge for testing not exceeding ten percent (10%) of their invoiced value.
- (c) Repair or replacement of defective Goods is Buyer's sole and exclusive remedy. THE WARRANTY SET FORTH IN THIS SECTION DOES NOT COVER GOODS THAT (1) HAVE BEEN IMPROPERLY INSTALLED, MAINTAINED, OR SERVICED; (2) HAVE BEEN ABUSED OR TAMPERED WITH; OR (3) HAVE BEEN SUBJECTED TO OPERATING CONDITIONS OUTSIDE OF SPECIFIED PARAMETERS.

### **9. LIMITATION OF LIABILITY**

- (a) THE LIMITED WARRANTY SET FORTH IN THE SECTION ABOVE IS THE ONLY WARRANTY OFFERED UNDER THIS CONTRACT. THE COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, NON-OBSOLESCENCE OR ANY WARRANTIES ARISING FROM TRADE USAGE OR COURSE OF DEALING. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, WILL COMPANY BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION 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. COMPANY WILL NOT BE LIABLE AND BUYER AGREES TO INDEMNIFY COMPANY FOR ALL PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LIABILITY RESULTING IN WHOLE OR IN PART FROM BUYER'S NEGLIGENCE. NO CLAIMS OF ANY NATURE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE MAY BE BROUGHT AGAINST COMPANY MORE THAN TWENTY-FOUR (24) MONTHS AFTER DELIVERY OF GOODS TO BUYER.
- (b) This Contract is strictly for the benefit of the Company and the Buyer and there are no third-party beneficiaries of this Contract.

### **10. Governing Law; Dispute Resolution; Venue**

The Contract shall in all respects be governed by 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 Contract. All disputes, claims or controversies (individually or collectively, a "Dispute") between Company and Buyer arising out of or relating to this Contract, including without limitation 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 Contract 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. Company 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, Company 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.

### **11. Notices**

Any notice purported to have been given to the Buyer shall be deemed to have been duly served and have been received by the Buyer three days after mailing if sent by the Company by pre-paid letter addressed to the Buyer at the Buyer's last known address.

### **12. Third-Party Services**

- (a) The Buyer acknowledges that the wireless messaging services related to the Goods, and the messaging network through which such services are provided, (together, the "Services") are provided by a third party (the "Service Provider").

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- (b) None of the warranties included herein with respect to the Goods shall apply to the Services. The Company disclaims all warranties or other representations concerning the Services.
- (c) The Company is not liable to the Buyer for any direct loss or damage of any kind suffered by the Buyer in relation to the Services, including, without limitation, resulting from or arising out of:
  - (1) Any mistakes, errors, omissions, delays or interruptions in the receipt, transmission or storage of any messages, signals or information in relation to the Services; or
  - (2) The use of the Services by the Buyer, its customers or any other person.
- (d) In the event of termination of the Services to the Company by the Service Provider, Company's sole obligation shall be to use reasonable endeavours to seek an alternative provider of the Services. Under no circumstances shall the Buyer, its customers or any person have the right to return Goods in the event of the termination of Services.

**13. Compliance with Laws.** Each party represents and warrants, in connection with transactions contemplated by this Contract, and any other agreement contemplated by or entered into pursuant to this Contract, that it will comply with all applicable federal, state and local laws, codes, regulations, orders and ordinances, including without limitation: (A) all applicable laws and regulations regarding export controls, economic sanctions, trade embargoes and anti-boycott restrictions, and all applicable anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended) and the United Kingdom Bribery Act (collectively, "Applicable International Trade and Anti-Corruption Laws"); and (B) all applicable equal opportunity requirements including those set forth in U.S. Executive Order 11246, the U.S. Rehabilitation Act of 1973, as amended, and the U.S. Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and regulations promulgated thereunder, and laws 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, all of which are incorporated by reference into this Contract; and (C) all applicable 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 (collectively "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 any and 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. Company may terminate this Contract in its entirety, without liability to Buyer, if Company believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

### **14. Miscellaneous.**

- (a) No waiver of any provision, right or remedy contained in this Contract, including the terms of this Section 14(a), is binding on or effective against Company unless expressly stated in writing and signed by Company's authorized representative. Buyer expressly agrees that no right or remedy provided for in this Contract can be waived through course of dealing, course of performance or trade usage. Buyer expressly agrees and acknowledges that reliance on any waiver without Company's written consent is unreasonable. Waiver by Company of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. Company'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 Contract and all related Orders.
- (b) If any provision or part of a provision contained in this Contract is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Contract will remain in full force and effect.