

TERMS AND CONDITIONS OF SALE

These terms and conditions apply to your order. Please read them carefully prior to submitting an Order Form.

[1.0] DEFINITIONS

“**Agreement**” means these terms and conditions of sale.

“**Buyer**” means the person, organization or other legal entity identified as the Buyer on the TRAFx Quote and Order Form.

“**Invoice Date**” means the date indicated on the Seller’s invoice and unless otherwise specified corresponds to the date the Seller ships the quoted items purchased to the Buyer.

“**Order Form(s)**” means the TRAFx Quote and Order Form.

“**Product(s)**” means any item manufactured by the Seller, excluding for the sake of clarity TRAFx’s DataNet service.

“**Seller**” means TRAFx Research Ltd. (TRAFx), a corporation registered in the Province of Alberta (Canada).

“**You**” or “**Your**” means the Buyer.

[2.0] SCOPE The Buyer’s submission of an Order Form shall constitute the Buyer’s acceptance of the Seller’s Terms and Conditions of Sale, set forth herein. These Terms and Conditions of Sale shall be the complete and exclusive statement of the terms of agreement between the Buyer and Seller and shall take precedence over the Buyer’s supplemental or conflicting terms and conditions. Neither the Seller’s commencement of performance nor delivery shall be deemed or construed as acceptance of the Buyer’s supplemental or conflicting terms and conditions. Therefore, the Seller accepts your order conditioned on the express understanding and your agreement that the terms and conditions contained herein are the only terms and conditions applicable to your order. These terms and conditions may only be waived or modified in writing, and signed by both Buyer and Seller.

[3.0] ORDERS Orders are initiated by the Buyer submitting a completed Order Form to the Seller, electronically or otherwise. All orders are subject to approval by the Seller. The Seller will provide written acknowledgement by email to the Buyer that an Order Form has been approved at which time a binding contract is formed.

[4.0] PRICE Prices specified on the Order Form are valid for thirty (30) days after the Order Form’s date. All applicable sales taxes are the responsibility of the Buyer. For shipments outside of North America, duties and tariffs are also the Buyer’s responsibility.

[5.0] PAYMENT The Seller reserves the right to require payment in advance. Otherwise, payment is due 30 days from the Invoice Date. If an organization’s payment policy is incompatible with this section, the Buyer must email the Seller (info@trafx.net) in advance of submitting this Order Form to resolve this matter. Acceptable payment methods are by cheque, international money order, bank transfer, or approved credit card (MasterCard and Visa). For credit card purchases over \$3000, a 3% charge will be added to the total amount to offset the processing fee the credit card company charges the Seller. The Seller specifies the currency on the Order Form.

If the Seller does not receive payment by the due date, the Buyer may be charged interest on any unpaid balances at the rate of up to 2% per month or the maximum rate allowed by law. The Buyer shall be responsible for reimbursing the Seller for all costs (including legal fees) associated with collecting delinquent or dishonored payments or enforcing this Agreement.

[6.0] SHIPPING DATE, METHOD AND INSURANCE

[6.1] Ship date. Ship date is calculated based upon the lead time specified by the Seller on the Order Form. Lead time is the number of business days between the date of order approval by the Seller and the date of shipment (i.e., dispatch) by the Seller. The Buyer acknowledges the Ship date is an estimate only and may be changed due to circumstance beyond the Seller’s control.

[6.2] Shipping method and insurance. The shipping method and whether a shipment is insured or not is specified by the Seller on the Order Form. If an insured shipment is lost or damaged in transit, the Seller will open a claim with the shipper, upon your request. The Seller shall replace the lost order or damaged items once the claim has been settled.

Where the Buyer requests a shipping arrangement different than the one specified by the Seller on the Order Form, an additional service fee of \$50.00 may be billed to the Buyer (atypical shipment methods take longer to process).

For non-insured orders, and Buyer-requested shipping arrangements, the Buyer is responsible for the full price of lost orders or damaged items.

[7.0] REFUNDS Returns for refund or credit must be made within 15 days after receipt of an order. Refunds or credits will be granted only upon approval by the Seller. The Buyer will in all cases obtain written authorization and return shipping instructions from the Seller prior to returning any items. There will be a restocking fee of ten percent (10%). Returned items must be “like new” and returned complete in their original packaging. The Buyer must prepay return shipping-related charges and insure the shipment against loss and damage. Any refund or credit will not include any shipping-related charges shown on the Buyer’s invoice.

[8.0] TECHNICAL SUPPORT The Seller will provide technical support to the Buyer, in accordance with TRAFx’s then-current Technical Support Policy (see www.trafx.net/legal). In all cases, technical support will be via email or phone, and will be available to the Buyer during the Seller’s regular office hours.

[9.0] LIMITED WARRANTY

[9.1] Products. By purchasing any Product, the Buyer is deemed to have accepted the following warranty terms and other limitations. The Seller warrants to the Buyer that each Product shall be substantially free from defects in materials and workmanship under normal use for a period of one (1) year from the Invoice Date (or for a period of five (5) years if the Seller’s optional extended limited warranty is purchased). The exclusive remedy and entire liability under this warranty will be for repair or replacement of the Product under warranty on a like-for-like basis, at the Seller’s sole option. The Seller shall not have any obligation to repair or replace any Product under warranty until the Buyer returns the warranted Product to the Seller in accordance with these terms and conditions. This warranty shall not apply to any Product defects resulting from but not limited to the following: (a) improper maintenance or installation; (b) misuse, neglect or accident; (c) damage from moisture or corrosive environments; (d) electrostatic discharge; (e) operation outside the product’s specification; (f) failure to follow Product instructions or (g) alterations or modifications made to the Product in any way.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE SUPPLIED ON AN “AS IS” BASIS AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, WITH RESPECT TO THE PRODUCT. THE SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, AND NON-INFRINGEMENT.

To the extent any part of this limited warranty statement is inconsistent with local law, that part shall be deemed modified to be consistent with such local law. This limited warranty applies solely to the Buyer and is non-transferable.

[9.2] DataNet. For the sake of clarity the above Product warranty does not apply to DataNet service and/or technology, for which warranty terms are found in DataNet's Terms and Conditions of Use (see www.trafx.net/legal)

[9.3] Third party merchandise. Third party merchandise (e.g., cables) carries different warranty terms than TRAFx Products. Any warranty and technical support provided for third party merchandise is provided by the original manufacturer, not by TRAFx.

[10.0] DATANET SERVICE Terms and conditions applying to the DataNet service are also governed by DataNet's Terms and Conditions of Use (see www.trafx.net/legal) and the Buyer is bound by these on the Invoice Date, which corresponds to the Subscription Plan's start date.

[11.0] LIMITED LIABILITY FOR PRODUCTS IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OR OTHER DAMAGES, INCLUDING BUT NOT LIMITED TO ANY CLAIM FOR DAMAGES ARISING FROM LOST PROFITS, LOST REVENUE, LOST DATA, LOST OPPORTUNITY OR GOODWILL, LOSS OF USE OR OTHER ECONOMIC ADVANTAGES OR FOR OTHER INCIDENTAL OR CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE, PERSONAL INJURY), OR ANY OTHER LEGAL THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER SUCH DAMAGES ARE FORESEEABLE. IN ANY EVENT, THE TOTAL AGGREGATE LIABILITY OF THE SELLER FOR DIRECT DAMAGES SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT.

[12.0] INDEMNIFICATION The Buyer assumes all responsibility for use of any Product and for training the persons who will use the Product. The Buyer shall and hereby agrees to indemnify, defend with competent and experienced counsel approved in writing in advance by Seller, and hold harmless the Seller from any claim, demand, loss, liability, damage or expense (including, but not limited to legal fees, disbursements and costs) arising in any way from the use of the Product by the Buyer or the Buyer's employees, agents, servants, contractors, sub-contractors, representatives, visitors, patrons, volunteers, assigns or successors and each of them. The Buyer undertakes to hold the Seller harmless in case of any third party institutes a claim of whatever kind against the Seller with direct or indirect relation to this Agreement. Third party shall mean any other legal entity other than the Buyer.

[13.0] INTELLECTUAL PROPERTY. For the purposes of this clause, "Intellectual Property Rights" means all of the Seller's patent rights, design rights, copyrights, trademarks, the service marks, trade names, domain name rights, mask work rights, trade secrets, know-how and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature (anywhere in the world) or that are used or embodied in or in connection with the Products and any parts thereof. The Buyer acknowledges that any and all of the Intellectual Property Rights are and shall remain the property of the Seller and the Buyer shall not question or dispute the ownership by the Seller of any such Intellectual Property Rights. The Buyer agrees not to modify, change adapt or improve the Product(s) without the consent of the Seller which consent may be withheld at the discretion of the Seller. The ownership of any and all Intellectual Property Rights arising from changes, modifications, adaptations or improvements made to the Product(s) by the Buyer shall remain with the Seller. In the event of a breach or a threatened breach by the Buyer of this clause, the Seller shall, in addition to all other remedies available at law, be entitled to an injunction or any other

like remedy in order to prevent or to restrain any such breach or threatened breach by the Buyer in order to protect the Seller's intellectual property rights. This clause shall survive termination of this Agreement.

[14.0] FORCE MAJEURE The Seller shall not be responsible for delays or non delivery by reason of fire, explosion, floods, storms, accidents, strikes, riots, insurrections, war, acts of God or terrorism, power failures, transportation difficulties, government action, delays encountered when shipping the quoted items across international borders, embargos, inability to secure raw material, or any cause beyond the Seller's reasonable control.

[15.0] EXPORT CONTROL The Buyer acknowledges that the Products and other items sold hereunder are subject to applicable export control laws and regulations and agrees to comply with such laws and regulations.

[16.0] SEVERABILITY If any of the terms of this Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

[17.0] GOVERNING LAW AND FORUM This Agreement together with the purchase, sale and use of Products and other items, and all other aspects of the relationship between the Seller and Buyer shall be governed by and construed in accordance with the laws of the Province of Alberta and the applicable laws of Canada without giving effect to any choice of law rules that could result in the application of the laws of any other jurisdiction. The Buyer and Seller hereby agree to attorn to the exclusive jurisdiction of the courts in the Province of Alberta (Canada). Where the Buyer is located in the United States, Article 2 of the Uniform Commercial Code as applicable in the state of destination shall apply to any issues regarding conflicting contractual terms.

[18.0] GENERAL No waiver or change of any provision shall be effective unless made in writing and approved by both parties. No waiver of any breach of any provision shall constitute a waiver of any subsequent breach of the same or of any other provision. Headings are for the convenience of the parties only. Each term and condition under this Agreement will remain effective for so long as may be necessary to give effect to its purpose as set forth herein. Unless otherwise expressly stated in this Agreement all notices pertaining to this Agreement shall be faxed and deemed effective seven (7) days later. The Buyer may not assign its rights or obligations under this Agreement without the express written consent of the Seller. The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. Items sold by TRAFx are not intended for use in critical safety situations or nuclear facilities or any other application or activity where failure could cause substantial harm to persons or property.