

# NewEdge Signal Solutions “NewEdge”

## PRODUCT SALES TERMS AND CONDITIONS

### 1. DEFINITIONS

The following terms shall have the following meanings.

**Confidential Information** means information which has value by virtue of not being publicly known and includes the commercial terms of the Quotation, the Product Specification, the Software and any documentation. **Customer** means the customer ordering Product. **Defect** means the failure of the Product to conform in all material respects with the Product Specification. **Delivery** means the date on which the Products are delivered Ex Works (Incoterms 2015). **Delivery Date** means the delivery date in the Quotation. **Hardware** means the hardware element of the Product. **Product Specification** means the detailed functional specification of the Product as agreed at time of agreement and updated from time to time. **Product** means the Hardware including the Software which are agreed to be supplied or have been supplied in accordance with an Order. **Quotation** means the Quotation provided by NewEdge to the Customer. **Software** means proprietary software developed by NewEdge to implement the specified functionality.

**Warranty Period** means 12 months from Delivery.

### 2. ORDER ACCEPTANCE

Unless otherwise expressly agreed in writing by NewEdge these provisions override any terms or conditions stipulated, incorporated or referred to by the Customer in its order or negotiations. Notwithstanding acceptance of a Quotation and the placing of an order by the Customer, no contract shall arise until NewEdge's written acceptance of the Customer's order. The Customer's order and NewEdge's acceptance shall together constitute an "Order".

### 3. DELIVERY

NewEdge shall use all reasonable endeavours to deliver the Product on the Delivery Date. NewEdge undertakes to notify Customer of any anticipated deviation from such schedule. Any Delivery Dates quoted are intended as fair estimates only and are not a term of the Agreement. In the event that there is a delay in the Delivery Date which is not due to Customer, then NewEdge reserves the right to make deliveries in installments, to be separately invoiced and paid for by Customer in accordance with the agreed Payment Terms without regard to other scheduled deliveries.

### 4. ACCEPTANCE

Acceptance of Products will occur upon the Delivery Date, unless NewEdge is notified in writing within 7 days from the Delivery Date that Customer is making any claim including for shortages in delivery, failing which Customer will have waived such claims.

### 5. PURCHASE PRICE AND PAYMENT TERMS

The price is set out in the Quotation. The price is exclusive of any applicable Value Added Tax or any other levy or duty or local tax which shall be payable in addition by the Customer. Invoices will be raised according to the payment schedule defined in the Quotation. Payment of invoices will fall due within 30 days of the date of invoice without deduction. In the event that payment of the full amount shown on any invoices is not made to NewEdge within 30 days of the date of the invoice the Customer will be liable to pay interest on the amount unpaid at a rate of 4% above the base rate from time to time of xxxxxx Bank. If Customer fails to pay any sums due by 30 days after the due date, then the licence granted to use the Software on Products shall be suspended until payment is received. In addition, NewEdge shall have the right, by written notice within 14 days from the date when payment became due, to rescind the Order for Product and to recover damages from the Customer for any resulting loss. The Customer shall have no right to withhold any such payments by reason of any set off or counterclaim in respect of any sums due from NewEdge to the Customer or any claim by the Customer against NewEdge.

### 6. TITLE AND RISK

The risk in the Hardware shall pass from NewEdge to Customer on Delivery. Notwithstanding Delivery, title to the Hardware shall not pass to the Customer until all sums due or owing on Delivery have been paid in full. Title to the Software shall never pass. Until such time the Customer holds the Hardware on trust for NewEdge and will deliver the Hardware up to NewEdge upon demand and permit NewEdge or its agents to enter upon the Customer's premises in order to retake possession of the Hardware

### 7. INTELLECTUAL PROPERTY RIGHTS

NewEdge shall remain the owner of all copyrights, trademarks, trade secrets, inventions, patents, intellectual property and other proprietary rights in all materials, designs, processes, engineering details and other data in and to the Product and NewEdge's Confidential Information. Subject to payment of all invoices due and owing, NewEdge shall grant to Customer a non-exclusive, non-transferable license to use the Software solely for the purpose of operating the Hardware. Customer shall not, directly or indirectly, modify, reverse engineer, reverse compile, de-compile, or disassemble the Product except to the extent permitted by law. Customer shall not: (a) change remove or obscure any labels plates notices insignia lettering or other markings which are on or embodied in the Product at the time of delivery; (b) break or interfere with any seals or other protection devices on the Product.

### 8. PROPRIETARY RIGHTS.

NewEdge reserves all right, title, and interest in any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by NewEdge under this Agreement. Nothing in this Agreement will be deemed to grant to Customer any ownership rights in such intellectual property.

### 9. CANCELLATION AND TERMINATION

The Customer may cancel an Order without cause only with the agreement of NewEdge. Without prejudice to any other right or remedy, either party may terminate the Order at any time by notice in writing to the other party if the other party: (a) becomes insolvent, or if an order is made or a resolution is passed for the winding up of the other party (other than for the purpose of a solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in any other jurisdiction or (b) is in material breach of its obligations, and in the event that the breach is capable of remedy, the defaulting Party does not remedy the breach within thirty (30) days of notice requiring such remedy. Termination for any reason whatsoever shall be without prejudice to any rights which shall have accrued prior to such termination. All of the Parties' rights and obligations regarding intellectual property rights and Confidential Information shall survive termination

### 10. CONFIDENTIALITY

All Confidential Information of a Party, whether written or oral (provided, however, that any information or data which is orally disclosed to the receiving party shall not be considered confidential and proprietary unless such oral disclosure is reduced to writing and given to the receiving party in written form within 10 days of oral disclosure thereof), that may be disclosed, made available to or otherwise learned by the other party or any of its personnel shall (i) remain the sole property of the disclosing party, and (ii) be kept in strictest confidence by the receiving party and its employees and contractors and not be used or disclosed by the recipient to or for the benefit of any third party other than contractors who have signed similar confidentiality undertakings. However, the receiving party's obligations contained in (ii) above do not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure in breach of this Agreement (ii) was or becomes available to the receiving party on a non-confidential basis as evidenced by documentation in the receiving party's possession or (iii) was developed by or for the receiving party independently of and without reference to any of the disclosing party's Confidential Information.

### 11. WARRANTY

NewEdge warrants to Customer that the Product shall be free of material defects in materials and workmanship and shall conform to the Product Specification in all material respects during the Warranty Period. In the event that there is a Defect during the Warranty Period, NewEdge shall, at its option, repair, modify, or supply a replacement for the defective part. This shall be Customer's sole remedy for any defect in the Product. NewEdge will bear its own costs in carrying out such warranty work. The decision as to whether to repair or replace the part or component shall be made solely by NewEdge. It is Customer's responsibility to identify any Defect in the Product and to return the Product to NewEdge or its designated repair facility. Customer must obtain a Return Material Authorization (RMA) number from NewEdge prior to returning any Product under warranty. Transportation charges to NewEdge will be paid by Customer and transportation costs back to Customer by NewEdge unless the fault reported by Customer falls outside of the scope of the warranty, in which case Customer shall reimburse NewEdge for any costs and expenses incurred by NewEdge in connection with such reported fault.

These warranties will not apply (i) if adjustment, repair, or replacement is required because of accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power, environmental controls, transportation, failure to be handled, stored, used or maintained properly or otherwise in accordance with the specifications, or abuses other than ordinary use; (ii) if the Product has been modified by Customer or has been repaired or altered outside NewEdge's repair facility, unless NewEdge specifically authorizes such repairs or alterations in each instance; or (iii) where Customer is overdue in its payments for the Products. Any defective electrical or mechanical components replaced, or Software corrections applied, by NewEdge will be warranted for a period of three months or until the expiry of the Warranty Period, whichever is the longer.

### 12. IPR WARRANTY

Should any part of the Product become, or in NewEdge's sole opinion be likely to become, the subject of any valid claim of infringement of a third party's intellectual property rights, Customer's sole remedy shall be that NewEdge, at NewEdge's option and expense, may either (i) procure for Customer the right to continue using the Product, or (ii) replace or modify the infringing part of the Product to render it non-infringing, but so that it shall have materially the same operational characteristics, function, and performance.

### 13. LIABILITY

In no circumstances whatsoever shall NewEdge be liable for any consequential loss suffered by the Customer whatsoever and howsoever arising (including but not limited to any loss of profit, revenue or income, any liability under any claim brought or intimated by a third party or any expenditure directly or indirectly caused by, related to or arising out of any defects or other failures in the Product supplied by NewEdge) and whether caused by NewEdge's negligence, misrepresentation, breach of contract, warranty, or otherwise. NewEdge's liability or the amount of any indemnity, damages or compensation payable by NewEdge on any claim or claims whatsoever concerning or relating, directly or indirectly to the Product supplied and including but not limited to claims based on negligence, misrepresentation, breach of contract, warranty or the aforesaid warranty, shall not in aggregate exceed the monies actually received by NewEdge under the relevant Order. The warranties in this Agreement replace and exclude to the extent permitted by law, all other conditions, warranties and representations (express or implied), statutory or otherwise.

CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT PRODUCTS AND SERVICES ARE NOT DESIGNED, MANUFACTURED, OR TESTED FOR USE IN LIFE OR SAFETY CRITICAL SYSTEMS, HAZARDOUS ENVIRONMENTS OR ANY OTHER ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING IN THE OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION; AIR TRAFFIC CONTROL SYSTEMS; LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR SUCH OTHER MEDICAL DEVICES; OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE PRODUCT OR SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, SEVERE PROPERTY DAMAGE OR ENVIRONMENTAL HARM (COLLECTIVELY, "HIGH-RISK USES"). FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. NEWEDGE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS OF THE PRODUCTS OR SERVICES FOR HIGH-RISK USES. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD NEWEDGE HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S USE OF THE PRODUCTS AND SERVICES FOR ANY HIGH-RISK USES, INCLUDING CLAIMS FOR PRODUCT LIABILITY, PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NEWEDGE.

CUSTOMER ACKNOWLEDGES THAT IT IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY AND RELIABILITY OF THE PRODUCTS OR SERVICES WHENEVER THE PRODUCTS OR SERVICES ARE INCORPORATED IN ITS SYSTEM OR APPLICATION, INCLUDING THE APPROPRIATE DESIGN, PROCESS, AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION. FURTHER, CUSTOMER MUST TAKE PRUDENT STEPS TO PROTECT AGAINST PRODUCT AND SERVICE FAILURES WHEN PRODUCTS AND SERVICES ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING PROVIDING BACK-UP AND SHUT-DOWN MECHANISMS. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD NEWEDGE HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, ACTIONS, INCLUDING LAWSUITS, ARBITRATIONS, AND/OR ADMINISTRATIVE ACTIONS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF CUSTOMER'S INCORPORATION OF THE PRODUCTS OR SERVICES INTO ITS SYSTEM OR APPLICATION, REGARDLESS OF WHETHER SUCH CLAIMS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED OR ACTUAL NEGLIGENCE OF NEWEDGE.

Nothing in this Agreement will exclude or limit either party's liability for death or personal injury arising from that party's negligence, nor for liability arising from a party's fraudulent misrepresentation. NewEdge shall have no liability whatsoever for any damages suffered, directly or indirectly, by any person as a result of (i) the operation or use of the Product in combination with any other hardware or software not supplied by NewEdge; or (ii) any modification to the Product or any of its components, including without limitation the Software, made by Customer or any third party.

### 14. FORCE MAJEURE.

NewEdge shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labour or materials ("Force Majeure Event"). In the event of a Force Majeure Event, NewEdge reserves the right to cancel the applicable order without any liability to Customer.

### 15. EXPORT REGULATIONS

Customer will not re-export any Products or products of which the Products are a component without first obtaining the relevant license from the U. S. Government or other Government as required.

### 16. LIMITATION PERIOD.

NEWEDGE SHALL NOT BE LIABLE FOR ANY CLAIM ARISING UNDER THIS AGREEMENT BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

### 17. UPDATES.

NewEdge reserves the right to update this Agreement at any time, effective upon posting an updated version at [NewEdge.com/legal/termsofsale](http://NewEdge.com/legal/termsofsale); however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

### 18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Massachusetts, U.S.A., without regard to principles of conflicts of laws. The parties submit to the personal jurisdiction of the state and federal courts in xxxxx, Massachusetts. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Products will not apply to this Agreement.

### 19. GENERAL

Any Order under these provisions shall be governed by and construed in accordance with the laws of State of Massachusetts, USA. The courts of the country in which the defendant in an action is incorporated shall have exclusive jurisdiction in any dispute arising out of the interpretation or implementation of these provisions. Failure by either party to enforce any right not be deemed a waiver of future enforcement of that or any other right. Neither party will be liable for any delay in performing its obligations under these provisions if that delay is caused by circumstances beyond its reasonable control (including, without limitation, any delay caused by an act or omission or the other party) and the party affected will be entitled to a reasonable extension of time for the performance of its obligations. Neither Party shall act or describe itself as the agent of the other, nor shall it make any commitments on the other's behalf. An Order under these provisions shall be binding upon the Parties' respective successors and permitted assigns. Neither Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party. All notices to be served shall be in writing and delivered by hand or sent by pre-paid first class post or by facsimile or by email to the parties normal place of business or to such address as either party may from time to time specify. Notices so sent by post shall be deemed received and take effect two days after the date of posting, and notices sent by facsimile or email one day after the date of transmission provided that a copy is also posted by pre-paid first class post within 24 hours of transmission.

These provisions together with the Quotation and the Product Specification constitute the entire agreement between the Customer and NewEdge in relation to the subject matter of the Order and supersede any prior communications whether verbal or in writing between the parties and there are no other understandings, representations or promises, written or oral, not included here or upon which either Party has relied. No variation of these provisions shall be effective unless expressly agreed in writing and signed by each party. If any provision is held to be invalid, the rest of the provisions will continue to be valid to the maximum extent permissible under law.