

Terms and Conditions of Sale Ensignt Solutions, LLC



Seller is in the business of, among other things, manufacturing and selling equipment, components, parts, and other similar products for use in the food processing industry. Buyer is interested in purchasing this type of equipment from Seller. The parties desire to memorialize below the terms and conditions that will govern these transactions.

The Parties agree as follows:

Terms and Acceptance. Until this Agreement is terminated by its terms or by written agreement of the parties, each and every purchase order, proposal or quote related to Ensignt's sale of equipment, components, parts and other similar products that are the subject of a proposal, purchase order or quote issued to or by Buyer that is accepted in writing by Ensignt (the "Equipment"), will be subject to the terms and conditions of this Agreement regardless of whether any specific reference is made to this Agreement in such document. No provisions printed or otherwise contained in any document which are inconsistent with or in addition to the terms and conditions herein stated will be effective unless both Buyer and Ensignt agree to them in writing.

Prices, Invoices, Due Dates and Payments.

Equipment prices will be published from time-to-time by Ensignt. Prices are subject to change by Ensignt at any time before Ensignt accepts an order. Ensignt will submit invoices to Buyer for payment. All payments from Buyer to Ensignt are due within 30 days of the date of invoice unless otherwise agreed to in writing by the parties. Ensignt will use commercially reasonable efforts to submit invoices no later than ninety (90) days from completion of equipment delivery. If an invoice dispute arises, the parties will reasonably cooperate with each other to resolve the dispute. Buyer will pay taxes, excises and custom fees, presently or hereafter levied on Ensignt, relating to the goods or services provided. Unless otherwise agreed to in writing by Ensignt, all payments shall be made in United States Dollars.

Payment Default. Buyer is in default under this Agreement when it fails to pay for Equipment under the terms of this Agreement. Upon default, Buyer agrees to reimburse Seller for Seller's costs of collection, including its reasonable attorney's fees and costs, Buyer shall pay interest at 1 ½ percent per month for any amounts not paid in accordance with the terms of this Agreement. Seller shall have all of the rights and remedies of a secured

party under the Uniform Commercial Code, or other applicable laws, and may accelerate and declare all of the indebtedness of Buyer immediately due and payable. Seller retains the right to take immediate and exclusive possession of any Equipment for which payment is in default. Buyer shall allow Seller to enter into its premises for the purpose of removing any Equipment for which Buyer is in default.

Title; Risk of Loss; Shipping. All Equipment will be shipped FOB Ensight's loading dock. Buyer will pay all shipping and insurance costs, and title and risk of loss and damage will pass upon delivery of the Equipment to the shipper. Ensight will use Buyer's recommended freight forwarder or carrier and instruct it to bill Buyer directly or prepay the freight and add it to the invoice, as the parties agree.

Acceptance. Buyer will be deemed to have accepted all Equipment ("Acceptance") the earlier of: (a) on the date the Equipment is placed in operation by Buyer or (b) three months after Ensight delivers the equipment to Buyer.

Software License. Ensight hereby grants Buyer a nonexclusive, nontransferable and perpetual license to use any and all Ensight software that is embedded in the Equipment and any and all software that is otherwise pre-installed by Ensight on the Equipment covered by this purchase agreement at the time of delivery, together with the documentation under each program element thereof. Absent Ensight's prior written consent, Buyer may not transfer or sublicense the Ensight software to any person or entity. Buyer acknowledges that the Ensight software may be subject to certain additional licensing terms, which will be provided to Buyer before Acceptance, and Buyer will ensure that its use of the Ensight software complies with all such licensing terms.

Warranties. Ensight warrants that (i) for a period of one year after Acceptance, the Equipment being purchased pursuant to these terms and conditions will conform to and perform in accordance with written performance specifications and documentation delivered by Ensight to Buyer in connection with securing each related purchase order, and any expanded specifications identified by Buyer and agreed to in writing by Ensight, and (ii) for a period of one year after Acceptance, the Equipment will be free from defects in material and workmanship. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ENSIGHT DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR

PURPOSE, WHETHER ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR OTHERWISE.

Safe Operation. Buyer is responsible for the safe operation of the Equipment and will train its employees to operate the equipment in a safe manner, use and require its employees to use all safety devices and guards during the operation and maintenance of the Equipment. Buyer will not remove or permit anyone to remove any safety guards, devices or warning signs. Buyer will operate maintain and clean equipment in accordance with manufactures instructions, regulatory requirements and general industry standards. Buyer will notify Seller within 2 business days of any personal injury or property damage arising out of the use of the equipment and cooperate with the Seller if it chooses to investigate any such accident. Any failure of Buyer to operate the equipment in a safe manner will void the warranty and indemnification provisions of this agreement.

Remedies for Breach of Warranty. If the Equipment fails to perform as warranted in Section 6 above, Ensight will, at its option, replace or repair the portion of the impacted Equipment. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, Buyer or third party negligence or misuse, including, without limitation, misapplication or use beyond capacity, improper installation, modification, repair, storage or handling on Buyer's or its agents' behalf, or any other cause not the fault of Ensight are not warranted and will be made at Buyer's sole expense. Seller may require prior payment for repairs or replacement of Equipment, parts, materials and labor not covered by the warranty provided herein.

Indemnity. Buyer will indemnify, defend and hold Ensight harmless from and against any and all claims, causes of action and losses based on or attributable to any actual or alleged claim, demand or proceeding by any person or entity alleging liabilities, damages or costs against Ensight as a result of the negligence, gross negligence or willful misconduct of Buyer, its officers, directors, agents, employees, representatives, contractors and customers. This indemnity specifically includes any claims for personal injuries, accidents, death or dismemberment alleged to have been caused by the Equipment which is not a direct result of the actions or inactions of Ensight. If Ensight becomes aware of a claim, it will promptly notify the Buyer of the claim and details sufficient to enable the Buyer to fulfill its obligations under this paragraph. Ensight will provide reasonable cooperation to assist in defense of the claim at Buyer's expense.

Limitation of Liability. EXCEPT FOR (A) THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 ABOVE, AND (B) THE PARTIES' CONFIDENTIALITY OBLIGATIONS UNDER SECTION 12(C), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR FOR DIMINUTION IN VALUE, LOSS OR REVENUE, OR LOSS OF PROFIT IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY OR THAT SUCH LIABILITY IS FORESEEABLE.

Lien Rights. At all times until Buyer has paid in full for the Equipment, Ensign will have a lien against the Equipment. At its option, Ensign may file any documents needed to perfect and protect such lien rights. Upon payment in full, Ensign will execute and provide copies of affidavits, lien waivers, releases and similar documents as may be reasonably required by Buyer.

Ownership. Ensign will retain all rights, title and ownership to any "Intellectual Property" that is incorporated into the Equipment. As used in this Section 12, the term "Intellectual Property" means any work product, discoveries, inventions, technical information, procedures, or processes, software, firmware, technology, know-how or other intellectual property rights owned, developed or obtained by Ensign or known by Ensign that are used by Ensign in creating, or are embodied within, any Equipment. Ensign hereby grants to Buyer the non-exclusive, non-transferable, royalty free right and license to use the Intellectual Property only insofar as is required for Buyer to operate or resell the Equipment. Buyer will not reproduce or ask any other representative of buyer to reproduce any Equipment without the written consent of Ensign.

Force Majeure. The performance of either party to this Agreement shall not be deemed a default or a breach if its non-performance is due to acts of God, acts of a public enemy, war, riots, strikes, lockouts, labor disputes, fire, flood, earthquakes or other natural disasters, unavoidable casualty, embargoes, shortages or labor or materials, changes in law, government policy or regulation, or any other acts or actions beyond the control of the parties hereto. If a party hereto is unable to perform its obligations under this Agreement for a period of three (3) months due to any reason enumerated in this section, the other party may, at its option, terminate this Agreement.

Miscellaneous Provisions.

Amendment. This Agreement may only be amended by an instrument in writing signed by both of the parties hereto.

Assignment. No party may assign this Agreement, in whole or in part without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

Compliance with Laws. Buyer shall be solely responsible for determining whether the Equipment complies with the laws of the state or country where the Equipment will be installed or operated.

Confidentiality. Except to their respective employees, agents, contractors and affiliated companies who have a need to know, Buyer and Ensign will not disclose any information and material which is designated as proprietary and confidential by the disclosing party in connection with the transactions contemplated under this Agreement. Neither party will use the designated information or materials other than as reasonably necessary to perform this Agreement. These confidentiality obligations survive for three years after this Agreement is terminated, except that to the extent any of the confidential information constitutes a trade secret under applicable law, that information will remain confidential for as long as the information qualifies as a trade secret.

Electronic Transactions. The parties agree that they may conduct transactions by electronic means. No record or signature may be denied legal effect or enforceability solely because it is in electronic form.

Entire Agreement. This Agreement represents the entire agreement of the parties. No purchase order, amendment, modification or release from any provision hereof, may arise out of a course of action or mutual agreement unless that agreement is in writing, signed by both parties.

Governing Law and Venue. This Agreement will be construed in accordance with the laws of the State of Missouri. For any dispute relating to the subject matter of this Agreement or any of the Equipment purchased hereunder, exclusive jurisdiction and venue will be in the state and federal courts located in Greene County, Missouri.

Headings. Headings in this Agreement are for reference only.

No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

Notice. All notices, requests, demands and other communications which are required or may be given under this Agreement must be in writing and will be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method; the day after it is sent, if sent by recognized expedited delivery service; and five days after it is sent, if mailed, first class mail, postage prepaid. In each case, notice must be sent to:

If to Ensign: Ensign Solutions, LLC. 597 Evergreen Road Strafford, MO 65757
Attn: Legal

Copy to: Ensign Solutions, LLC. 549 Evergreen Road Strafford, MO 65757 Attn: President
Or to another address as either party may have specified in writing to the other using the procedures specified above in this section.

Parties Bound. This Agreement will bind the parties and their respective successors, heirs, personal representatives and assigns.

Publicity. Neither party may use of any of the other party's trademarks or logos, without the prior written consent of the other party, or make any public announcements relating to this Agreement, except with the express written consent of the other party.

Severability. If any provision of this Agreement is adjudicated to be unconscionable, unenforceable, or void for any reason by any tribunal of competent jurisdiction, the provision in question must be modified to eliminate those concerns. The result will be then binding on the parties. The remaining provisions of this Agreement will remain unaffected.

Waiver. Failure of either party to enforce at any time, or for any period of time, one or more of the terms or conditions of this Agreement will not constitute a waiver of that term or condition, or of that party's rights thereafter to enforce this Agreement's terms.
International Sales. Any sale of Equipment by Ensign for delivery in any country other than the United States of America shall, if applicable, be subject to the United Nations Convention on Contracts for the International Sale of Goods.