

Abaco Systems Conditions of Sale

The sale or supply of any products and/or services by Abaco Systems, Inc. or its subsidiary ("Abaco") to the customer ("Customer") is expressly governed by the terms and conditions contained or referred to herein. Any additional or different terms and conditions set forth in Customer's purchase order or other communication are objected to and will not be binding upon Abaco unless specifically agreed to in writing by Abaco's authorized representative, provided, however, that no preprinted facility entry form shall be binding even if signed by Abaco's representative. Any order or authorization by Customer, whether written or oral, to furnish products or services or licensing of software shall constitute acceptance of these terms and conditions.

Any software (including firmware) provided hereunder shall be subject to the terms of the standard Abaco Software License Agreement accompanying such software. Such software is licensed, not sold. Any preproduction equipment provided hereunder shall be subject to the standard Abaco Preproduction Equipment User Agreement accompanying such equipment. Any product support programs provided hereunder (such as Maintenance Support or Product Lifecycle Management) shall be subject to the standard Abaco terms for such program. Such terms for such software, equipment, and programs are also at www.abaco.com/legal and are incorporated herein by reference.

1. WARRANTY

1.1 Abaco warrants to Customer that Abaco-branded products ("Abaco Products") (other than software, which is governed by the standard Abaco License Agreement) and services ("Services") sold will be free from material defects in material, workmanship and title and will materially conform to any mutually agreed upon specifications (or, if there are no such agreed specifications, the specifications provided by Abaco). If such Abaco Products or Services do not meet the foregoing warranties, and Customer promptly notifies Abaco thereof within the applicable warranty period set forth in section 1.2 below (other than for warranty of title) and returns such product to Abaco pursuant to Abaco's applicable Repair and Replacement Policy, Abaco will correct any such failure by reperforming any defective portion of the services, and, with respect to products, at its option, (i) by repairing any defective or damaged part or parts of the products, or (ii) by making available, FCA Abaco's facility or other point of shipment (Incoterms 2010) any necessary repaired or replacement parts. Inbound shipping charges to Abaco, including associated taxes, duties, tariffs, etc., shall be paid by Customer. Return (outbound) warranty repair shipping charges shall be paid by Abaco to Customer's destination. If in Abaco's reasonable judgment such repair or replacing of products or reperformance of services is not practicable, Abaco shall refund or credit monies paid by Customer for such products or services or, with respect to services, furnish without charge services in an amount essentially equal to those which, in Abaco's sole judgment, would have been required for reperformance.

1.2 The warranty period for Abaco Products shall be two (2) years from the date of shipment, except as follows: (a) one (1) year from the date of shipment for any such products in a Abaco-provided system which integrates hardware and software into a common platform or enclosure; (b) one (1) year from the date of shipment for end of life (EOL) products; and (c) ninety (90) days from the date of shipment for all replacement or repaired products or parts, or the termination of the warranty period with respect to the original product or part for which the replacement parts were supplied or the repairs were made during the original warranty period, if sooner. The warranty period for Services shall be ninety (90) days from the completion of the Services.

1.3 The warranties and remedies set forth herein are conditioned upon: (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Abaco; (b) the absence of repairs, modifications or alterations not authorized by Abaco; and (c) Customer promptly notifying Abaco of any defects and (if required), promptly making the product available for correction, and Abaco's ability to reproduce and observe the claimed defect.

1.4 Abaco warrants non-Abaco manufactured products, including but not limited to personal computers, micro drives, rotary disks, compact flash, cables and accessories, etc., only to the extent that the manufacturer's warranty allows Abaco to transfer such manufacturer's warranty to Customer. Abaco will pass through to Customer any such warranties. Customer's sole remedy for breach of such warranty shall be the remedy offered by and available from the manufacturer, if any.

Abaco shall have no liability, whether in contract, tort, negligence, or otherwise, to Customer with respect to non-Abaco manufactured products. Consumables (such as batteries, light bulbs, and the like), and failures due to consumables are excluded from all warranties.

1.5 Certain products hereunder may contain remanufactured subassemblies or parts which have been cleaned, refinished, inspected, and tested to new-product standards. The warranty for any such product will be as provided in this agreement or any applicable warranty of the third party manufacturer, if applicable.

1.6 Except as set forth in section 2 below, the preceding paragraphs set forth the exclusive remedy for all claims based on failure of, or defect in, products or services sold hereunder, whether the failure or defect arises before or during the warranty period, and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the warranty period, all such liability shall terminate. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. IN THE EVENT THAT ABACO IS UNABLE TO REPAIR OR REPLACE THE PRODUCT IN A TIMELY FASHION, OR ANY WARRANTY PROVIDED HEREIN OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE, CUSTOMER'S RECOVERY OF ANY DAMAGE OR LOSS SHALL BE LIMITED TO THE PRICE PAID FOR THE PRODUCT.**

2. INTELLECTUAL PROPERTY

2.1 Abaco shall retain exclusive rights to its products, intellectual property rights (including copyrights, trademarks, patents and trade secrets), schematics, logic diagrams, and manufacturing processes, and to all modifications thereto funded by Customer's purchase order. Abaco shall retain ownership and does not convey, nor does Customer or Customer's final customer obtain any right, title, or interest in, software or firmware, specifications or data furnished or developed by Abaco either prior to or in the performance of Customer's order. No schematics or source code shall be furnished, unless pursuant to a separate license as agreed by Abaco. Subject to the performance of its obligations hereunder, Customer shall have a license to use Abaco's intellectual property rights only as they are embodied in the products and for no other purpose. Customer shall not modify or reverse engineer the products.

2.2 Abaco warrants that any Abaco Products sold hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If promptly notified in writing and given full authority, information and assistance, Abaco shall defend, or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty, and Abaco shall pay all damages and costs finally awarded therein against Customer due to such breach, other than damages and costs arising from any willful infringement by Customer after receipt of notice of the claimed infringement. Abaco shall not be responsible for any compromise or concession made by Customer without Abaco's prior written consent. In case any Abaco Products are in such suit held to constitute such an infringement and the use for the purpose intended of said products is enjoined, Abaco shall, at its expense and option, either procure for Customer the right to continue using said products, or replace same with noninfringing products, or modify same so they become noninfringing, or remove the products and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Customer. The foregoing states Abaco's entire liability for patent infringement.

2.3 Abaco shall have no liability under Section 2.2 above if the infringement or claim is based in whole or in part upon (a) a product not of Abaco's manufacture; (b) a product manufactured to Customer's design; (c) a modification of the product not introduced or approved in writing by Abaco; or (d) the interconnection or use of the product in combination with equipment, software or other devices not made or supplied by Abaco. As to any such product, modification, or use in such combination, Abaco assumes no liability whatsoever for patent infringement and Customer shall hold Abaco harmless against any infringement claims arising therefrom.

3. SHIPPING AND DELIVERY; TITLE

3.1 Delivery of products will be made FCA Abaco's facility (Incoterms 2010). Title to products shipped by Abaco from the United States shall pass to Customer immediately after each item departs from the territorial land, seas, and overlying airspace of the United States. Title to all other products shall pass when the product is made available for shipment at the point of shipment. Title to services shall pass pro rata as the services are performed.

3.2 Unless otherwise agreed by the parties in writing:

(a) Abaco shall determine the method and routing of all deliveries;

(b) delivery dates and times are approximate and based on (i) prompt receipt by Abaco of all information necessary to permit Abaco to proceed with work immediately and without interruption, (ii) Customer's compliance with the payment terms, (iii) prompt receipt by Abaco of all evidence Abaco may request that any required export or import license, as applicable, is in effect;

(c) the prices for the products include only Abaco's usual quality processes, systems, and tests; and

(d) partial deliveries shall be permitted.

3.3 Products shall be prepared, packed and shipped by or on behalf of Abaco in accordance with good commercial practices unless otherwise agreed by the parties. A complete packing list shall be enclosed with all shipments. Customer agrees to reimburse Abaco for any costs for any non-standard packing, marking or shipping directions contained in the purchase order.

4. PAYMENTS AND FINANCIAL CONDITION

4.1 Unless otherwise agreed by the parties in writing, the following payment terms shall apply: (a) payments shall be due without setoff net thirty (30) days from the date of invoice; (b) payment shall be in US Dollars or in other currency as set forth in Abaco's quote; (c) payment for international transactions outside the US, EU, and Canada will be per documentary Letter of Credit; and (d) payment for product shall become due pro rata as shipments are made and payment for services shall be due as services are performed. Payment shall be made to Abaco's address as shown on its invoice.

4.2 Customer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by law, whichever is less, on any past due amount for each calendar month (or fraction thereof) that the payment is overdue, and Customer shall pay, indemnify and save Abaco harmless from any and all costs and expenses of Abaco's collections efforts including reasonable attorney's fees, and costs associated with compromises and judgments arising therefrom. Abaco retains a security interest and right of possession in the articles until Customer makes full payment, and Customer agrees to sign documentation at Abaco's request as reasonably necessary to perfect such interest.

4.3 Unless provided otherwise in Abaco's quote, fifty percent (50%) of any non-recurring engineering charges ("NRE") shall be due and payable at acceptance of the purchase order or contract execution. The balance of such NRE (the "NRE Balance") shall be due and payable within thirty (30) days after completion of the NRE work. In the event of a cancellation of the NRE contract or purchase order after commencement but prior to completion of NRE work, Abaco shall be entitled to payment of a percentage of the NRE Balance equal to the percentage of NRE work completed prior to cancellation, as reasonably determined by Abaco. All NRE charges are nonrefundable.

4.4 Any requests for changes shall apply only if Abaco and Customer agree in writing on the specifications of the change and the corresponding changes to pricing and/or schedule.

4.5 If at any time Abaco determines that Customer's financial condition does not justify continued performance on the terms of payment previously agreed upon, Abaco may require full or partial payment in advance or shall be entitled to suspend work or terminate the agreement without liability therefor. In the event of the insolvency of Customer or in the event any proceeding is brought by or against Customer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, Abaco shall be entitled to suspend work or terminate the agreement without liability therefor.

5. TAXES AND DUTIES

5.1 Customer shall pay, or reimburse Abaco for, the gross amount of any present or future sales, use, excise, income, value-

added or other similar tax applicable to the price, sale or furnishing of any services or products hereunder, or to their use by Abaco or Customer, or Customer shall provide Abaco with evidence of exemption acceptable to the taxing authorities.

5.2 Unless otherwise indicated on Abaco's quotation, prices quoted do not include any value-added tax (VAT), export/import duties, customs fees or brokerage fees, all of which shall be the responsibility of Customer.

6. LIMITATIONS OF LIABILITY

6.1 ABACO'S LIABILITY FOR ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS AND CONDITIONS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS OR SERVICES COVERED BY OR FURNISHED UNDER THE CONTRACT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL, IN THE AGGREGATE, IN NO CASE EXCEED THE CONTRACT PRICE OF THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED, ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD.

6.2 IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, SHALL ABACO, ITS EMPLOYEES OR SUPPLIERS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF THE CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES, EVEN IF ABACO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND CUSTOMER WILL INDEMNIFY ABACO, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF THE PRODUCTS OR SERVICES BEING PROVIDED BY ABACO WILL BE FURNISHED BY THE CUSTOMER TO A THIRD PARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN CUSTOMER AND A THIRD PARTY, CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING ABACO AND ITS SUPPLIERS THE PROTECTION OF THIS SUBSECTION AND THE PRECEDING SUBSECTION.

6.3 The products licensed or sold hereunder are not intended for use in any nuclear facility or application, or any life-support equipment or other application where failure of the products could lead directly to death, personal injury or severe physical or environmental damage. If so used, Abaco disclaims all liability for any damages arising as a result of the hazardous nature of the application in question, including but not limited to nuclear or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend Abaco, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), strict liability, or any other legal theory, regardless of whether Abaco had knowledge of the possibility of such damages.

6.4 If Abaco furnishes Customer with advice or assistance concerning any products or systems which is not required pursuant to the agreement, the furnishing of such advice or assistance will not subject Abaco to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

7. EXCUSABLE DELAYS

Abaco shall not be liable for breach of its obligations hereunder to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including but not limited to acts of God, acts (or omissions) of Customer or its suppliers or representatives, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, terrorism,

riot, delays in transportation, or inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities, including any vendor's alleged infringement of third party intellectual property rights. In the event of any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay. In the event Abaco is delayed by acts of Customer or by prerequisite work by other contractors or suppliers of Customer, Abaco shall be entitled to an equitable price adjustment in addition to extension of the time of performance.

8. EXPORT

If Customer exports (or reexports), directly or indirectly, any products or technical data supplied hereunder or any portion thereof, it is Customer's responsibility to assure compliance with U.S. and other applicable export control laws and to obtain any required licenses or approvals in its own name. Customer is also responsible for the accuracy and completeness of any information or certification provided by Customer for purposes of export control compliance.

9. U.S. GOVERNMENT CONTRACTING

If Customer is a U.S. Government entity or elects to sell products or services provided hereunder to the U.S. Government or to a contractor selling to the U.S. Government, the following provisions apply: (a) Customer agrees that all products and services provided by Abaco meet the definition of "commercial-off-the-shelf" (COTS) or "commercial item" as defined in FAR 2.101, and that the subparagraph terms of FAR 52.212-5(e) or FAR 52.244-6 (or, for orders from the U.S. Government, FAR 52.212-5 and FAR 52.212-4 with tailoring to the extent permitted by FAR 12.302 by replacing all paragraphs except those listed in FAR 12.302(b) with these Conditions of Sale), and (subject to subsection (f) below) DFARS 252.212-7001(c) or DFARS 252.244-7000, whichever are applicable, apply only to the extent applicable to COTS or commercial items and only as appropriate for the dollar value of this order; (b) with regard to any terms related to Buy American Act or Trade Agreements, the country of origin of products is unknown unless otherwise specifically stated in writing by Abaco; (c) Customer agrees that any services offered by Abaco are exempt from the Service Contract Act of 1965 (FAR 52.222-41); (d) Customer agrees that this sale is not funded, in whole or in part, by the American Recovery and Reinvestment Act unless otherwise set forth in a written agreement of the parties; (e) Customer is solely and exclusively responsible for compliance with any other applicable statutes or regulations governing sales to the U.S. Government, and Abaco makes no representations, certifications or warranties whatsoever with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations, other than those contained herein; and (f) Abaco makes no representations, certifications or warranties whatsoever with respect to the ability of its goods to satisfy DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

10. CANCELLATION; RESCHEDULING

10.1 Cancellation-Standard Products. Customer may cancel its order for a standard product only if, prior to the shipment date requested in its purchase order, Customer: (a) provides Abaco with written notice of the order cancellation; and (b) agrees to pay Abaco the cancellation fee for each cancelled product. Unless the parties agree otherwise, the cancellation fee shall be as follows:

Number of days prior to the scheduled shipment date that notice of cancellation is received by Abaco:	Cancellation charge per unit (expressed as percentage of the catalog price):
more than 90 days	25%
61-90 days	50%
31-60 days	75%
within 30 days	100%

10.2 Rescheduling-Standard Products. Customer may delay the shipment of a standard ordered product only if, prior to the shipment date requested in its purchase order, Customer: (a) provides Abaco with written notice of the delay; (b) has not previously delayed shipment of such products; and (c) if the notice of the delay is less than ninety (90) days prior to the shipment date requested in Customer's purchase order, and/or if the duration of the delay is to exceed one hundred eighty (180) days, agrees to pay Abaco for inventory and material handling and storage charges equal to two percent (2%) of the total price of the affected products for each month of such delay. However, in no event may the shipment be delayed for longer than eighteen (18) months.

10.3 Custom products or Last-Time Buys for End of Life (EOL) Products. Notwithstanding the foregoing, orders for custom products or for last-time buys for end of life (EOL) products may not be cancelled, rescheduled, or returned. A "custom product" is any non-standard product developed by Abaco under a special agreement or any product not appearing in Abaco's standard product catalog.

11. GENERAL PROVISIONS

11.1 These Conditions of Sale, along with any terms and conditions or documents referenced herein, contain the complete agreement between the parties, and no modification, amendment, rescission, waiver or other change will be binding on Abaco unless agreed to in writing by Abaco's authorized representative. The terms "herein," "hereof," "hereunder," and the like shall refer to this agreement as a whole. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Abaco. The invalidity, in whole or part, of any sections or subsections hereof shall not affect the remainder of such section or subsection or any other section or subsection hereof.

11.2 This Agreement shall be governed by the laws of the State of New York without regard to its conflict of law provisions. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

11.3 Abaco reserves the right to subcontract any of its work to one or more subcontractors.

11.4 Customer may not assign any of its rights, duties, or obligations hereunder without Abaco's prior written consent.

11.5 This Agreement is not intended to create any rights of enforcement on any third party (other than permitted assignees to whom the agreement is actually assigned).

11.6 Customer shall not transmit to Abaco any information, suggestions, or ideas claimed by Customer to be confidential except pursuant to a writing, signed by an authorized representative of Abaco, which identifies such information and addresses its confidentiality.

11.7 Where Customer is within the European Union, it shall comply with its applicable national Data Protection rules compliant with EU directives relating to the disclosure, usage and storage of personal data received from Abaco under or in connection with this Agreement. Where Customer is not within the European Union, Customer agrees that any personal data and information belonging to employees, agents, sub-contractors or directors working or acting on behalf of Abaco and received under or in connection with this agreement, shall: (a) only be used in conjunction with this agreement; (b) shall not be passed to third parties; and (c) shall be removed from any media storage devices and otherwise destroyed immediately upon expiry, completion or cancellation of this agreement.

11.8 Customer agrees that detailed personal data regarding Customer is being stored and processed in a central data center under the responsibility of Abaco Systems, Inc. in the United States of America and may therefore be transferred outside of the European Union and – if applicable – is being held jointly with other Customer data available within Abaco or its affiliates. The data may be used for the purpose of marketing research about products and services of Abaco, exclusively by Abaco, its affiliates and/or its official sales channels. Information on the stored data can be obtained and consent can be withdrawn at any time – a simple notice to Abaco is sufficient.

11.9 The following shall apply only to those sales where Abaco is a U.K. entity, notwithstanding anything to the contrary herein:

(a) This Agreement shall be governed by the laws of England and Wales. The U.K. Contracts (Rights of Third Parties) Act, as amended, is hereby excluded.

(b) If Customer resides in the U.S., Customer agrees to abide by the Safe Harbor framework as established by the U.S. Department of Commerce governing the disclosure, usage and storage of personal data received from European Union-based companies.

(c) Payment shall be made British Pounds Sterling, or other currency as set forth in Abaco's quote.

(d) The interest rate referred to in Section 4.2 shall be deemed to be eight percentage points above the Bank of England base rate established on the latest previous 31 December or 30 June.

(Nov. 2015)