

## Terms and Conditions of Sale of Spare Parts Kits

### SECTION 1: STANDARD TERMS AND CONDITIONS OF SALE FOR SPARE PARTS KITS

All purchases of Spare Parts Kits by Company from Zebra Technologies International, LLC or such of its Affiliates as is responsible for the shipment of the Spare Parts Kits (as stated on the purchase order and confirmed on the corresponding order acknowledgment) (hereafter the "**Seller**") shall be governed by the Seller's Standard Terms and Conditions of Sale for Spare Parts Kits and any relevant Seller quotation document. Any purchase order placed by Company for Spare Parts Kits ("Order"), if and when accepted by the Seller, shall constitute a separate binding contract entered into by the Seller and Company in accordance with and incorporating the Seller's Standard Terms and Conditions of Sale for Spare Parts Kits and any relevant Seller quotation document (hereafter "Agreement"). An Order (which may be part of a purchase order) is accepted only under the terms of the Agreement which shall apply to the exclusion of all others (including terms set out on the Orders issued by Company).

#### 1. DEFINITIONS

Unless otherwise noted herein, all terms not herein defined shall have the meanings ascribed thereto in the Service Approval Addendum to which this Agreement is appended as Exhibit C and the documents referenced therein. Capitalized terms used in the Agreement shall have the following meanings:

**"Bookable Order Criteria"** shall mean the requirements for placing an Order, details of which can be found in Exhibit D.

**"Party"** shall mean the Seller or Company and "Parties" shall be construed accordingly.

**"Proprietary Materials"** shall mean technical materials, including, but not limited to, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications that the Seller has developed prior to, or independently from, the provision of any Seller services and/or that Seller licenses from third parties.

**"Proprietary Rights"** shall mean any intellectual property rights including without limitation:

(a) patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, ideas and concepts, processes, methodologies, tools, techniques, utility models, moral rights, topography rights, database rights and rights of confidence and all embodiments thereof, whether tangible or intangible in all cases whether or not registered or registrable in any country, for the full terms (including any extension to or renewal of the terms) of those rights and including registrations and applications for registration of any of these and rights to apply for the same; and

(b) all rights and forms of protection of a similar nature or having equivalent or similar effect to any of those set out in (a) anywhere in the world.

**"Working Days"** shall mean Monday to Friday.

#### 2. TERMS OF PAYMENT

Payment terms for the purchase of the Seller's Spare Parts Kits are net thirty (30) days from date of invoice, subject to the approval by the Seller of the amount and terms of credit. Each shipment shall be invoiced and paid for when due without regard to other scheduled deliveries. The Seller reserves the right at any time to revoke any credit extended to Company if payment is in arrears for more than thirty (30) days after notice to Company or Company's credit does not warrant further extension of credit. Failure to comply with payment within sixty (60) days of the due date for payment under the Agreement will invalidate any warranty by the Seller for software or Spare Parts Kits supplied under the Agreement.

#### 3. TITLE & DELIVERY

3.1 The Parties agree that all shipments are FCA Zebra's shipping location Incoterms 2010. Title to the Spare Parts Kits and risk of loss and all liability shall pass to Company upon Zebra's making the product available to Company's designated carrier. In the absence of such designation by Company, Zebra will select the carrier for shipment, but by doing so, will not thereby assume any liability in connection with shipment, and the carrier shall not in any way be construed to be Zebra's agent. Zebra assumes no responsibility for delays in shipment or damage after having made delivery of the Products to the carrier. Company shall be responsible for complying with all customs formalities and bear all costs and risks resulting therefrom.

3.2 All shipping and insurance charges for Spare Parts Kits shipped by Zebra shall be paid by Company. All shipments and billings of Spare Parts Kits shall be made to Company at its business address provided by Company as part of the Application, unless otherwise agreed to by Zebra and Company, and specified in the Order. Each shipment hereunder shall be deemed a separate transaction.

3.3 Company will be deemed to have accepted the Spare Parts Kits upon shipment, unless Company notifies Zebra in writing within the timeframe specified in Zebra's applicable Defect On Arrival ("DOA") policies and procedures that Company rejects a particular unit of the Spare Parts Kits for failure to conform to documented performance specifications. In its notice of rejection, Company must state the specific reason for rejection. In the event that Zebra authorizes a return of Spare Parts Kits, Company shall return the affected unit to Zebra in the same condition as when Company received such unit. All returns must be in the original container and packaging, complete with all accessories and instructions, and must be shipped freight prepaid, and Zebra's then-current DOA return policy and procedures shall apply. Except for the Spare Parts Kits warranty, the foregoing provisions of this Section constitute Company's sole remedy for defective Spare Parts Kits; Company shall have no other right to reject all or any part of a shipment of Spare Parts Kits furnished hereunder because any or all of the Spare Parts Kits in that particular shipment may be defective.

#### **4. PRICES AND TAXES**

4.1 Zebra shall sell Spare Parts Kits subject to any additions, discounts and discount programs, deletions, or changes that may from time to time be made, at the prices in effect on the date of acceptance of Company's Order.

4.2 All prices are FCA Incoterms 2010, Zebra's designated shipping location.

4.3 Prices are exclusive of all value-added tax, municipal or other government excise, custom duties, sales, use, occupational or like taxes in force, and any such taxes shall be assumed and paid for by Company. In order to exempt a sale from sales or use tax liability, Company will supply a Certificate of Exemption or similar document to the Seller at the time of Order placement.

#### **5. INTEREST**

Without prejudice to its other rights or remedies, the Seller reserves the right to charge late payment interest to Company on undisputed invoices that have not been settled on or before the due date on the invoice. Late payment interest under the Agreement will be charged at the rate of six percentage points (6%) above the last reference rate announced by the Bank of England and calculated on a daily basis until payment is made in full.

#### **6. INFRINGEMENT INDEMNIFICATION**

6.1 The Seller shall indemnify Company by defending, at its expense, any claim, and any lawsuit to the extent based thereon, that is brought against Company alleging that any Seller-branded Spare Part Kits and confirmed on the associated Order acknowledgment (in this Clause 6 "Seller Spare Part"), as originally delivered by the Seller to Company under the Agreement, directly infringes a copyright or a registered patent in the country in which the Seller originally sold the Seller Spare Part to Company ("Infringement Claim"), so long as the Seller is notified in writing by Company as soon as reasonably practicable as to any such claim, but in no event after the Seller would be prejudiced by a lack of such notice, is given sole authority and control of the defense, and is provided by Company all requested information and assistance for resolving or defending the Infringement Claim. For non- Seller-branded Spare Parts Kits supplied hereunder, including any third-party software, the Seller's obligations for IP infringement claims shall be limited to any IP indemnities or defense commitments provided by such third-party supplier. In addition to the Seller's obligation to defend, and subject to the same conditions, the Seller shall pay all damages finally awarded against Company by a court of competent jurisdiction to the extent based upon such Infringement Claim, or agreed to in writing by the Seller in settlement of the Infringement Claim. If a Seller Spare Part is subject to an Infringement Claim or, if in the Seller's judgment, likely to become subject to an Infringement Claim, in addition to its obligation to defend and pay damages, the Seller, in its sole discretion, shall: (a) obtain a license for Company to continue to use or to sell the Seller Spare Part purchased from the Seller; (b) replace or modify the Seller Spare Part so as to be substantially functionally equivalent but non-infringing; or (c) require the return of the Seller Spare Part and credit the purchase price paid to the Seller by Company for such Seller Spare Part less a reasonable charge for depreciation calculated on a three (3) year straight line depreciation basis. The Seller shall have no liability to the Company for any alleged or

actual infringement, or otherwise, arising out of or in connection with the Company's use or transfer of the Seller Spare Parts Kits after the Seller's written notice to the Company that the Company shall cease use or transfer of such Seller Spare Parts Kits.

6.2 The Seller shall have no obligation to defend or indemnify the Company under the Agreement for any damages based upon a per-use royalty or the Company's revenues, or upon any damages theory other than a reasonable royalty applied to, or lost profits of the patent owner based on, the purchase price paid by the Company to the Seller for the infringing the Seller Spare Part. The Seller shall have no obligation to defend or indemnify the Company under the Agreement for any alleged or actual infringement arising out of (a) use of the Seller Spare Parts Kits in connection or in combination with equipment, devices or software not provided by the Seller; (b) use of the Seller Spare Parts Kits in a manner for which they were not designed; (c) any modification of Seller Spare Parts Kits by anyone other than the Seller; (d) compliance with the Company's designs, specifications, guidelines or instructions; (e) compliance with a standard issued by any public or private standards body; or (f) any assertion by a non-practicing entity which maintains no significant manufacturing capability ((a) – (d) defined as "Excluded Conduct"). The Company shall indemnify the Seller against any claim of infringement that is brought against the Seller based upon or arising out of such Excluded Conduct or arising out of the Company's continued use or transfer of the Seller Spare Parts Kits after being noticed to cease such use or transfer. The Seller shall not be responsible for any compromise or settlement made by the Company without the Seller's prior written consent.

6.3 This Clause 6 provides the Company's sole and exclusive remedies and the Seller's entire liability in the event of an Infringement Claim. The Company has no right to recover and the Seller has no obligation to provide any other or further remedies, whether under another provision of the Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Clause are subject to and further limited by the restrictions set forth in the general limitation of liability Clause of the Agreement (Clause 13). In no event, shall the Seller be liable for any special, incidental, indirect, collateral, consequential or punitive damages or lost profits of the Company in connection with any claims, losses, damages or injuries under this Clause. In no event, shall the Seller's liability under this Clause exceed the total net value of the respective purchase order giving rise to the Infringement Claim.

## **7. WARRANTY**

7.1 The Seller Spare Parts Kits are warranted against defects in workmanship and materials for a period of thirty (30) days from the date of shipment ("Warranty Period"), unless otherwise provided by the Seller in writing, provided the Spare Part remains unmodified and is operated under normal conditions and in line with the published product specifications.

7.2 Warranty provisions and durations on software, integrated installed systems, Spare Part modified or designed to meet specific Company specifications ("Custom Spare Parts Kits"), remanufactured Spare Parts Kits, and reconditioned or upgraded Spare Parts Kits, shall be as provided in the particular Spare Part Kits catalogue in effect at the time of purchase or in the accompanying software license.

7.3 Spare Parts Kits may be serviced or manufactured with parts, components, or subassemblies that originate from returned Spare Parts Kits that have been refurbished to meet the applicable specifications for equivalent new material and hardware Spare Parts Kits.

7.4 The sole obligation of the Seller for defective Spare Parts Kits is limited to repair or replacement (at the Seller's option) on a "return to service depot" basis with prior written Seller authorization. Company is responsible for shipment to the Seller and assumes all costs and risks associated with this transportation; return shipment to Company will be at the Seller's expense. Company shall be responsible for return shipment charges for Spare Parts Kits returned where the Seller determines there is no defect ("No Defect Found"), or for Spare Parts Kits returned that the Seller determines is not eligible for warranty repair. No charge will be made to Company for replacement parts for warranty repairs. The Seller is not responsible for any damage to or loss of any software programs, data or removable data storage media, or the restoration or reinstallation of any software programs or data other than the software, if any, installed by the Seller during manufacture of the Spare Part.

7.5 The above warranty provisions shall not apply to any Spare Part (i) which has been repaired, tampered with, altered or modified, except by the Seller or Seller authorized repair providers; (ii) in which the defects or damage to the Spare Part result from normal wear and tear, misuse, negligence, improper storage, water or other liquids including contamination with bodily fluids, battery leakage, use of parts or accessories not approved or supplied by the Seller, or failure to perform operator handling and scheduled

maintenance instructions supplied by the Seller; or (iii) which has been subjected to unusual physical or electrical stress, abuse, or accident, or forces or exposure beyond normal use within the specified operational and environmental parameters set forth in the applicable Spare Part specification; or (iv) if the Company does not give written notice of the defect to the Seller, within fourteen (14) days of the time when the Company discovers or ought to have discovered the defect; or (v) If the Seller is not given an opportunity after receiving the notice of examining such Spare Parts Kits and the Company (if asked to do so by the Seller) returns such Spare Parts Kits to the Seller; or (vi) if the Company makes any further use of such Spare Parts Kits after giving such notice; nor shall the above warranty provisions apply to any expendable or consumable items, such as batteries, supplied with the Spare Part unless otherwise stipulated in the relevant Spare Part Kits.

7.6 Additionally, the Seller hereby represents and warrants that the Seller has all right, title, ownership interest and marketing rights necessary to provide the Spare Parts Kits to the Company.

7.7 Except as expressly provided in the Agreement, all other conditions, warranties, terms, undertakings, statements and/or representations of any kind whatsoever, express or implied, whether by statute, common law, in any communication with the Company or otherwise are excluded from the Agreement to the fullest extent permitted by law and the Seller specifically disclaims the implied terms, conditions and warranties of merchantability, satisfactory quality, non-infringement, or fitness for a particular purpose and makes no representations or warranties of any kind regarding any third party software. Some jurisdictions do not allow the exclusion of implied terms, warranties or conditions, so the above exclusion may not apply to the Company.

7.8 Any Proprietary Materials provided under the Agreement to the Company are provided "as is". The Seller does not warrant that the Proprietary Materials will meet the Company's requirements, or that the operation of the Proprietary Materials will be uninterrupted or error free, or that defects in the Proprietary Materials will be corrected. The Seller makes no warranty with respect to the correctness, accuracy, or reliability of the Proprietary Materials.

## **8. ORDERS**

8.1 The Company must submit to the Seller an Order for the Spare Parts Kits in the currency applicable to the Company as previously agreed with the Seller, and such Order is subject to the Seller's acceptance. Such Orders shall be submitted to the appropriate order entry location, in the form and medium, all as specified by the Seller, which may be physical or virtual.

8.2 If there is any inconsistency between the terms of the Agreement and the terms of the Company's Order, the terms of the Agreement shall prevail and the inconsistent terms of the Company's Order shall be void and of no effect.

8.3 An Order must be signed (including electronic signatures if applicable) by an authorized signatory and shall comply with the then current Seller's Bookable Order Criteria. At the Seller's discretion, Orders received without this information will be rejected and the Company will be asked to re-submit.

8.4 The Seller shall acknowledge the receipt of Orders within five (5) Working Days, unless the Seller has a legitimate reason to reject such Orders. Such legitimate reason may be including but not limited to termination of production, insufficient credit line of the Company, an overdue payment of the Company etc. Delivery dates acknowledged by the Seller are approximate and the Seller will not be liable for any loss or damage due to its failure to meet scheduled delivery dates.

8.5 In the event the Company requests the Seller to delay delivery of Spare Part Kits with less than thirty (30) days written notice prior to the scheduled shipment date of the Spare Part Kits, the Company may, at the Seller's discretion, be subject to a fifteen (15%) percent charge based upon the contract price of the Spare Part, where the Seller has incurred costs to satisfy the original shipment date. If the Company requests postponement of a scheduled shipment to a date that is six (6) months or more after the originally scheduled shipment, the Order pertaining to such shipment shall be considered cancelled. In the event of any cancellation, due to shipment date postponement or otherwise, the Seller shall be entitled to pursue all legal remedies.

## **9. PROPRIETARY RIGHTS**

All Proprietary Rights in the Spare Parts Kits and all future modifications and variations made to the Spare Parts Kits are and shall vest in the Seller or its licensors including techniques and components of the development of software incorporated in the Spare Parts Kits to which the Company may have contributed, unless otherwise agreed in writing and signed by authorised officers of both Parties. The

Seller reserves the right to audit the Company records using an independent third party auditor to verify compliance with all licenses granted under the Agreement.

#### **10. FORCE MAJEURE**

10.1 Neither Party shall be liable for any delay or default in its performance of any obligation under the Agreement caused directly or indirectly by an act or omission of civil or military authority of a state or nation, strike, lockout or other labor problem, inability to secure, delay in securing or shortage of labor, materials, supplies, transportation or energy, failures of subcontractors or suppliers, or by war, riot, embargo or civil disturbance, breakdown, or destruction of plant or equipment arising from any cause whatsoever, or any other cause or causes beyond such Party's reasonable control (a "Force Majeure Situation").

10.2 At such Party's option and following notice to the other Party, that Party's obligations shall be deemed to be suspended for the continuance of the Force Majeure Situation and such Party agrees to continue performance of such obligations whenever such Force Majeure Situation has been concluded.

#### **11. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

11.1 These Terms and Conditions of Sale for Spare Parts Kits, together with the Service Approval Addendum and the documents referenced therein, represent the entire agreement of the parties with respect to the subject matter contained herein. Any and all prior discussions or agreements with respect hereto are merged into and superseded by these Terms and Conditions of Sale for Spare Parts Kits. None of these terms and conditions may be added to, modified, superseded or otherwise altered except by a written instrument that is signed by an authorized representative of Zebra and delivered by Zebra to Company, and that expressly refers to these Terms and Conditions of Sale for Spare Parts Kits and states an intention to modify or amend it. Each shipment of Products from Zebra to Company shall be deemed to be only upon these Terms and Conditions of Sale for Spare Parts Kits except as they may be added to, modified, superseded or otherwise altered as provided herein. Sales of Products and Services will be made under the Terms and Conditions of Sale and Zebra Services Contract (as defined in the Reseller Community Addendum) respectively, which are posted on [www.zebra.com/partnerconnect-tc](http://www.zebra.com/partnerconnect-tc) or any equivalent thereof.

11.2 In the event of any conflicts or ambiguities between the legal documents covering Zebra's direct sale of Spare Parts Kits to Company, the order of precedence shall be as follows: (a) Service Approval Addendum (b) These Terms and Conditions of Sale for Spare Parts Kits; (c) Reseller Community Addendum; (d) Program Master Terms and Conditions; (e) Other Specialization Addendum/Addenda; and (f) the Zebra Standard Terms and Conditions.

11.3 Company and Zebra expressly agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions of Sale for Spare Parts Kits.