

Smartronix, Inc.
Standard Terms and Conditions of Sale
Effective May 1, 2015

1. **Scope.** The sales terms and conditions contained herein shall apply to all quotations and offers made by and purchase orders accepted by Smartronix. These terms and conditions may in some instances conflict with some of the terms and conditions affixed to the purchase order or procurement document issued by the Buyer. In such case, the terms and conditions contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions contained herein by acceptance and payment of the goods ordered hereunder, irrespective of whether the Buyer accepts these conditions by a written acknowledgment. Smartronix' failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any change in the terms and conditions of sale contained herein must specifically be agreed to in writing, signed by Smartronix, before becoming binding on either party. All orders, offers, and contracts must be approved and accepted by Smartronix.

2. **Terms of Payment.** Payment is expected at the time of sale unless otherwise agreed to in writing and signed by Smartronix. Smartronix may change its credit terms if Buyer's financial condition changes. In the event that credit is extended, Smartronix reserves a purchase money security interest in all products delivered until all of Smartronix' claims have been paid. Buyer agrees to execute any financing statements or other documents as Smartronix may request in order to perfect or protect the security interest. Upon any default by Buyer hereunder, Smartronix shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.. Each shipment shall be considered a separate and independent transaction. If an invoice is not paid within ten (10) days of written notice of delinquency by Smartronix, Buyer shall be required to pay interest from issuance of the invoice to the date of payment at the annual percentage rate of 18% (or such lower rate as may be the maximum allowable by law), in addition to Smartronix' costs of collection (including reasonable attorney's fees).

3. **Title and Delivery.** All prices quoted are exclusive of standard transportation costs, and all shipments are F.O.B Origin, or "Ex Works" Seller's facility (per Incoterms 2010), unless otherwise agreed to in writing and signed by Smartronix. Title and risk of loss pass to the Buyer upon delivery of goods to the carrier at the shipping point, and the Buyer shall pay all transportation charges. Shipments will be made using those generally accepted methods of transportation that are appropriate for the weight and size of the shipment, the distance, and the Buyer's delivery requirements. Unless instructions from the Buyer specify the method of shipment to be used, Smartronix will select the carrier. Claims for shortages must be made within ten (10) days after arrival. Standard product delivery shall be ninety (90) days After Acceptance of Order (AAO) by Smartronix, unless otherwise stated in writing by an authorized representative of Smartronix. Smartronix will make every reasonable effort to meet quoted delivery dates; however, Smartronix will not be liable for its failure to meet this date.

4. **Taxes.** All prices are exclusive of any present or future sales, revenue, VAT, duty, excise, tariffs, state and local use tax sales, excise taxes and similar taxes. Such taxes, when applicable, shall be paid by the Buyer unless the Buyer provides a proper tax exemption certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which equipment is to be directly shipped hereunder.

5. **Acceptance.** Buyer, or its authorized agent receiving shipment on behalf of Buyer, shall inspect all products immediately upon receipt. If Buyer or its agent

does not notify Smartronix in writing within ten (10) days after receipt by Buyer of any defect, shortage, or other failure to conform to the terms hereof, the products delivered shall be deemed conclusively to have fulfilled the terms of the sales contract and to have been accepted by Buyer as delivered.

6. **Returns.** All customer returns must be authorized via a Smartronix Return Material Authorization (RMA) request. No returns will be accepted without a properly issued Smartronix RMA number. Returns must be shipped within thirty (30) days after issuance of the RMA. Any customer returned products delivered to Smartronix more than sixty (60) days after issuance of the RMA shall be refused and returned to the customer freight collect. Returns for customer convenience must be requested within 30 days of the original receipt of the product(s). The minimum restocking fee for customer convenience returns shall be twenty (20%) percent of the sale price plus shipping charges.

7. **Cancellation.** Buyer cancellation or rescheduling will not be accepted absent specific agreement in writing by Smartronix, and may be subject to special charges. Buyer shall be liable for any quantity price adjustments resulting from any partial cancellation.

8. **Force Majeure.** Smartronix shall not be liable for any damage or penalty for delay in delivery, or for failure to give notice of delay, when such delay is due to the elements, acts of God, acts of the Buyer, acts of civil or military authority, war, riots, labor action, or any other causes beyond the reasonable control of Smartronix. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision. Smartronix shall also be entitled to an extension of time for commercially reasonable delays.

9. **Controlling Law.** This Agreement and all transactions under it shall be governed by the laws of the State of Maryland, USA excluding its choice of laws rules and excluding the Convention for the International Sale of Goods. All disputes arising in connection with the order and which cannot be resolved by Smartronix and Buyer in a friendly manner shall be submitted to and finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce with the said rules in USA. All arbitration proceedings shall take place in Washington, DC, USA by one or more arbitrators appointed in accordance with the Rules. Judgment upon the award may be entered in any US court having jurisdiction.

10. **Confidential Information.** Proprietary or confidential information ("Confidential Information") developed or disclosed by either party under this Agreement shall be clearly labeled and identified as Confidential Information by the disclosing party at the time of disclosure. Confidential Information shall not be disclosed by the receiving party to any other person except to those individuals who need access to such Confidential Information as needed to ensure proper performance of the Services. Neither party shall be liable for disclosure or use of Confidential Information which: (1) was known by the receiving party at the time of disclosure due to circumstances unrelated to this Agreement; (2) is generally available to the public without breach of this Agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by

applicable law or court order. Each party shall return all Confidential Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. This Section shall survive termination of this Agreement.

11. General Warranty. Smartronix warrants that the products covered hereby shall be free of defects in workmanship and materials, and shall conform to Smartronix' published specifications, or other specifications accepted in writing by Smartronix, for a period of one year (excluding the SuperLooper® Product Line) from the date of Smartronix' shipment (unless otherwise specified by Smartronix). The foregoing warranty does not apply to any products which have been subject to misuse, including static discharge, neglect, accident, or modification, or which have been altered and are not capable of being tested by Smartronix under normal test conditions. Extended warranty periods must be expressly agreed to in writing by Smartronix. The warranty period begins either on the date of delivery or, where the purchase price includes installation by Smartronix, on the date of installation.

12. Limitation of Liability. Smartronix' sole obligation to Buyer hereunder for products failing to meet the aforesaid warranty shall be, at Smartronix' discretion, to replace the nonconforming product or issue Buyer credit for the purchase price of the nonconforming product; provided that within the warranty period: (1) Smartronix has received written notice of any nonconformity; (2) Buyer has returned the nonconforming product to Smartronix prepaid; and (3) Smartronix has determined that the product is nonconforming and such nonconformity is not a result of improper installation, modification, or other misuse by Buyer. Smartronix shall have a reasonable time to make repair, replace product, or credit Buyer's account. Any replacement product shall carry only the unexpired term of warranty which was applicable to the replaced product. Smartronix may modify the specifications or components provided the modifications do not adversely affect the form, fit, or function of the products. Smartronix is not responsible for any loss of data which may occur with normal use of the Goods. BUYER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE HAS BEEN NEGOTIATED IN CONSIDERATION OF THE AGREEMENT TO LIMIT CERTAIN LIABILITIES. ACCORDINGLY, IN NO EVENT IS SMARTRONIX LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED. IN NO EVENT WILL SMARTRONIX BE LIABLE FOR ANY DAMAGES OR OTHER LIABILITY TO THIRD PERSONS ARISING OUT OF THIS AGREEMENT. IN NO EVENT WILL SMARTRONIX BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OR LOST REVENUE OR PROFITS, WHETHER OR NOT IT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THIS AGREEMENT. Further, in no event shall Smartronix be liable for damages of any kind in excess of amounts paid by Buyer for the Goods.

13. Exclusion of Warranties. The foregoing warranty and remedies are exclusive, and are made expressly in lieu of all other warranties expressed or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for use. Smartronix neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale, installation, or use of its products, and Smartronix makes no warranty whatsoever for products not manufactured by Smartronix. Smartronix shall not be liable for damages due to delays in deliveries or use, and shall in no event be liable for incidental or consequential damages of any kind. SMARTRONIX DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES FOR THE PRODUCTS AND/OR SERVICES DELIVERED UNDER THIS CONTRACT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Smartronix makes no representation or warranty, either express or otherwise, as to the exportability of its products outside the United States. It is the express obligation of the Buyer to ascertain the

legality of exporting Smartronix' products, and Buyer shall be solely responsible for acquiring any export licenses or consents.

14. Solvency. Buyer certifies that on the date of its order, and recertifies that on the date of shipment and at acceptance of shipment, it is solvent and has not filed for protection from creditors under the US bankruptcy laws. Seller may terminate this order for default, in whole or in part if: (1) The Buyer shall become insolvent or make a general assignment for the benefit of creditors; or (2) Files a petition under any bankruptcy act or statute.

15. General. The headings used in this agreement are used for administrative purposes only and do not constitute substantive matters to be considered in construing the terms of this agreement. The failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver of forfeiture of such rights. Buyer may not assign or transfer any of the rights, duties or obligations herein without the prior written consent of Smartronix and any purported attempt to do shall be null and void. Smartronix may assign or transfer any of the rights, duties or obligations herein without the prior written consent of Buyer, and Buyer hereby agrees to any such assignment. Any changes to the terms and conditions must be specifically agreed to in writing by a duly authorized representative of each party before becoming binding on either party.

16. Intellectual Property. The sale of products covered by this Order does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright, mask work rights, trade secret, trademark or other intellectual property or moral rights law of any state or national government covering any computer software, equipment, assembly, system, circuit, combination, method or process in which such products may be used, notwithstanding the fact that such products may have been designed for use in, or may in any way be useful in such patented equipment assembly, system, circuit, combination, method or process or may have been purchased and sold for such use. Smartronix expressly reserves all its rights under such patents, copyrights, mask work rights, trade secrets, trademarks or other intellectual property or moral rights law of any state or national government. Smartronix shall retain all ownership rights to all Innovations, whether or not jointly conceived, and all Intellectual Property rights arising therefrom, including, but not limited to, those Innovations that (i) derive from Smartronix' proprietary information, materials and/or Intellectual Property rights, and/or (ii) relate to the business of Smartronix. Smartronix shall have the right to incorporate such items in work for other customers and in its business generally. Unless specifically granted, Smartronix does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright, mask work rights, trade secret, trademark or other intellectual property rights.

18. Orders Under US Government Contracts. Unless otherwise agreed to in writing by Smartronix, all computer software and documentation will be delivered with Restricted Rights in accordance with FAR 52.227-19, Commercial Computer Software-Restricted Rights.