

# Standard Terms & Conditions

Form CD2 - 01 October 2006

## FASTechnologies STANDARD TERMS AND CONDITIONS OF SALE

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### 1. Definitions: As used herein, the following terms shall have the meanings ascribed to them below:

- A. "FASTechnologies" refers to FASTechnologies, Corp.
- B. "Authorized FASTechnologies Representative" shall mean only a FASTechnologies Officer, a representative of the FASTechnologies Contracts Department, or a person specifically designated as authorized by FASTechnologies' President, in writing.
- C. "Agreement" shall refer to a FASTechnologies Purchase Agreement or any other Customer order form accepted by FASTechnologies that incorporates these Standard Terms and Conditions as specified in Section 2 (Quotations, Proposals and Purchase Orders) below.
- D. "System" shall mean the products, equipment, and services identified in the Agreement and includes only those software programs, components, accessories, services, and documentation supplied as standard by FASTechnologies as indicated in the FASTechnologies Product Description literature unless a special configuration is clearly specified. The term System, as generally used, shall include the entire system of software and hardware, unless specifically excepted in a particular provision. FASTechnologies reserves the right to substitute new Licensed Software Program versions or hardware components of equivalent function for the System specified in the Agreement.
- E. "Purchase". Any reference to the "purchase" or "sale" of the System shall be deemed to mean "license" as that reference is applied to the Licensed Software Programs.
- F. "Licensee" and "Licensed Software Program(s)". Customer shall from time to time be referred to as "Licensee" with respect to the Computer Program License. "Licensed Software Program(s)" include any software programs supplied to Licensee by FASTechnologies, whether on media or imbedded in ROM or equivalent devices, and all material pertinent to these programs in machine readable or printed form, including, for example, discs, tapes, manuals, listings, documentation and any updated program or program portion thereafter furnished to Licensee by FASTechnologies in connection with Licensed Software Programs. The Licensed Software Programs may include material licensed to FASTechnologies by others, and as to such material FASTechnologies representations as to ownership, title, and proprietary interest are made on behalf of such others as well as FASTechnologies.
- G. "Temporary Security Codes" shall refer to certain alphanumeric codes required on a periodic basis by the System in order to operate or continue to operate. These codes are temporary inasmuch as they allow the System to operate for a finite, limited period of time.
- H. "Permanent Security Codes" shall refer to certain alphanumeric codes required on a one-time basis by the System in order to operate. These codes are permanent inasmuch as they allow the System to operate indefinitely.
- I. "Software Lock" shall refer to a component which serves as a physical repository for either Temporary Security Codes, Permanent Security Codes, or both. In addition to serving as a repository, a Software Lock may be interrogated by the Licensed Software Programs to read either Temporary Security Codes, Permanent Security Codes, or both. Licensed Software Programs will, based upon the results of such interrogation, either operate or refuse to operate.

### 2. Quotations, Proposals, and Purchase Orders

These Standard Terms and Conditions of Sale apply to all FASTechnologies quotations and proposals of sale and to all Customer orders for the System. Unless and until specifically accepted in writing by an Authorized FASTechnologies Representative, FASTechnologies shall not be bound by, and hereby explicitly rejects, any provisions on Customer's orders or forms which are at variance with or are in addition to the terms of FASTechnologies' quotations or proposals for the System and these Standard Terms and Conditions of Sale. The quotations and proposals do not constitute a final written offer; Customer's acceptance of a FASTechnologies proposal or any related Customer order are subject to FASTechnologies' final approval at its corporate headquarters in Minnesota, U.S.A. Customer may choose to accept these Standard Terms and Conditions of Sale by specifically incorporating them by reference in a Customer order or by specifically referencing a FASTechnologies proposal which includes or refers to "FASTechnologies Form CD-2", these Standard Terms and Conditions of Sale. By any such reference Customer shall be deemed to agree that these Standard Terms and Conditions of Sale shall govern the Agreement between FASTechnologies and Customer, that any printed language on the Customer's order shall have no force or effect, that any provisions in that order form are subordinate to these Standard Terms and Conditions of Sale, and that no additional provisions in Customer's order form shall apply unless specifically accepted in a subsequent writing by an Authorized FASTechnologies Representative. Prices quoted within FASTechnologies' written quotation or proposal of sale will be firm for a period of thirty (30) days from the date of issue unless otherwise therein provided. All representations as to delivery dates are good-faith estimates only and shall not constitute binding obligations.

### 3. Payment Terms; Security Interest; Remedies for Nonperformance

#### A. For orders above \$10,000

The full purchase price of the System together with applicable packaging, insurance, freight and installation charges shall be payable in U.S. Dollars in three installments (designated "A1", "A2", and "A3", respectively), as follows:

"A1" A deposit equal to 25% of the System purchase price is payable with the submission of the Purchase Agreement or other applicable order. FASTechnologies' acceptance of any Purchase Agreement or order shall be contingent upon actual receipt of funds and/or an irrevocable letter of credit and, when required, a valid U.S. export license.

"A2" 60% of the System purchase price, including any additional charges due for shipping and insurance, and other miscellaneous costs, is due and payable as follows: i) for systems being installed by FASTechnologies personnel, the 60% payment is required upon system start-up; ii) for systems not being installed by FASTechnologies personnel, the 60% payment will be invoiced on Net-30 terms upon system shipment.

"A3" The remaining 15% and any other applicable additional charges shall be due and payable thirty (30) days after the date of the shipment of the System, or acceptance of the System pursuant to Section 4 hereof, whichever is sooner.

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B. For orders less than or equal to \$10,000

Unless otherwise agreed to in writing by FASTechnologies, the full purchase price of the System together with applicable packaging, insurance, freight and installation charges shall be due and payable in U.S. Dollars prior to shipment by FASTechnologies.

C. FASTechnologies reserves the right at any time to require that Customer furnishes FASTechnologies with an irrevocable letter of credit issued by a recognized bank for any outstanding amounts payable to FASTechnologies under the Purchase Agreement. If Customer fails to comply in a timely manner with such a request for a letter of credit or to pay any amount to FASTechnologies when due, FASTechnologies shall have the right to suspend its further performance under the Agreement, to offset its damages against the deposit and to discontinue all maintenance, warranty and support services to Customer under this and other Agreements.

D. FASTechnologies shall retain a security interest in the System until the entire System purchase price and all additional charges are fully paid. FASTechnologies will, at its sole discretion, exercise its security interest in the System by providing Customer only such Temporary Authorization Codes as are needed by the System to continue its operation so long as Customer is, in the sole judgment of FASTechnologies, in compliance with each of the terms of the Agreement, notably payment terms. Customer hereby acknowledges that FASTechnologies can and may withhold such Temporary Authorization Codes from Customer, to deny Customer the continued use of the System in the event of and for the duration of such noncompliance. Customer hereby explicitly releases FASTechnologies and shall hold FASTechnologies harmless for any result or outcome of such denial of Customer's continued use of the System.

### 4. Installation, Testing, and Acceptance

A. Unless otherwise specified, within fifteen (15) days of its signing the Agreement, Customer shall provide FASTechnologies with any final documents and information required for the specific System configuration and installation.

B. Installation by FASTechnologies shall only be provided if specified as part of the System. Regardless of whether FASTechnologies installation services are included as part of the System, Customer is solely responsible for preparing the System site, supplying the specified computers, operating systems, and other customer-supplied equipment and software for the System in accordance with FASTechnologies' specifications.

C. If any installation of the System by FASTechnologies is delayed at the request of or due to acts or omissions of Customer, FASTechnologies' personnel may leave the installation site and return at a later agreed upon date. Customer shall pay all additional installation expenses incurred by FASTechnologies as a result of the delay at FASTechnologies' then-prevailing rates.

D. Following completion of any FASTechnologies installation, FASTechnologies shall reasonably demonstrate to Customer that the System is installed and that it can successfully perform FASTechnologies' standard tests. At that time the System shall be deemed accepted by Customer for all purposes. If Customer does not order FASTechnologies installation services, then Customer acceptance shall be deemed to occur at the time of completion by FASTechnologies of its final standard factory test.

### 5. Training

Training by FASTechnologies shall be included with the System only if specified as part of the System configuration in the Agreement or in the FASTechnologies printed Product Description for such System. All training by FASTechnologies shall be held at Customer's facility unless otherwise specified. All such training shall be used by Customer within twelve (12) months of the date of shipment of the System. All additional training requested by Customer beyond the specified limited number of hours or beyond twelve (12) months from the shipment date shall be at FASTechnologies' then prevailing rates.

### 6. Ownership of Industrial and Intellectual Property

The System, its software, and its documentation have been developed either by FASTechnologies supported research or have been paid for by FASTechnologies and thus represent a substantial investment by FASTechnologies in industrial and intellectual property. No sale of any software license shall include any rights to source code or copyrights in any software produced by FASTechnologies. Therefore, no System sale is to be construed as the grant by FASTechnologies to the Customer of an implied license to copy or to reconstruct anything falling within the scope of patents, copyrights, trade secrets, technical data, know-how or other industrial property of FASTechnologies or third parties. Any permission to so copy or reconstruct shall be only by prior written consent of an Authorized FASTechnologies Representative.

No System sale to any U.S. government entity shall be effective unless an addendum hereto has been executed by both parties hereto disclaiming any transfer of unlimited rights to FASTechnologies intellectual property and technical data. Clauses contrary to this in any subsequent orders or purchase orders from the Customer are not accepted by and will not be acceptable to FASTechnologies.

### 7. Computer Program License

A. Licensed Use. Upon acceptance of the Agreement, FASTechnologies as Licensor grants, and Customer as Licensee accepts, on the following terms and conditions, a nontransferable, non-exclusive license to use Licensed Software Programs only at the Customer's initial facility location at the time of the Agreement.

B. Term. Unless otherwise terminated by FASTechnologies in accordance with the Agreement, the term of this License shall continue indefinitely.

C. Copies.

1) Any Licensed Software Program which is provided by FASTechnologies in human readable form, such as written or printed documents, shall not be copied, in whole or in part, by Licensee. Additional copies of printed materials may be obtained from FASTechnologies at the charges then in effect. Any Licensed Software Program which is in machine readable form and not copy protected may be copied by Licensee in whole or in part, for Licensee's backup or archive purposes only. Licensee shall

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retain possession or control and maintain appropriate records of the number and location of all such copies of the Licensed Software Programs and make such records available to FASTTechnologies upon request.

2) The original and any copies of Licensed Software Program(s), in whole or in part, which are made by Licensee, shall be the property of FASTTechnologies. This does not imply that FASTTechnologies owns the media on which the copies reside. Licensee shall ensure that FASTTechnologies' proprietary notice appears on all copies of the Licensed Software Programs, whether copied in whole or in part or in any modified form.

### D. Protection and Security of Licensed Software Programs.

1) Licensee shall not provide or otherwise make available any Licensed Software Programs, including, but not limited to, flow charts, instruction manuals, logic diagrams and source codes, in any form, to any person other than Licensee's employees whose sole need and intention is to use such Licensed Software Programs in accordance with the Computer Program License. Licensee shall take appropriate action by instruction, agreement, or otherwise with its employees to satisfy Licensee's obligations under this Computer Program License with respect to use, copying, modification, and protection and security of Licensed Software Programs. Licensee shall notify FASTTechnologies immediately if Licensee has knowledge that any unlicensed party possesses any portion of the Licensed Software Programs. If FASTTechnologies discloses to Licensee's employees any proprietary and/or confidential information, including, but not limited to the materials comprising the Licensed Software Programs, Licensee shall require these personnel to agree not to disclose that proprietary and/or confidential information.

2) The obligations with respect to use and nondisclosure shall not apply to i) information which is or becomes publicly known through no fault of Licensee; ii) information learned by Licensee from a third party entitled to disclose it; iii) information already known by Licensee before receipt from FASTTechnologies as evidenced in writing; or iv) information which Licensee can clearly and convincingly demonstrate to have been independently developed by an employee or consultant of Licensee who had no previous knowledge of information received from FASTTechnologies. Obligations of nondisclosure shall not terminate on the termination of this Computer Program License.

3) Customer shall not attempt directly or indirectly to export, ship, or otherwise divert the Licensed Software Programs in any form to any country for which the U.S. Government requires an export license or other governmental approval.

E. Title to and ownership of all Licensed Software Programs and all updates and modifications shall at all times remain with FASTTechnologies.

F. Termination. If Licensee neglects or fails to pay in full for the System or neglects or fails to perform or observe any of its obligations under the terms of this Computer Program License, or if any assignment shall be made of its business for the benefit of creditors, or if a receiver, trustee in bankruptcy or a similar officer shall be appointed to take charge of all or part of its property, or if it is adjudged as bankrupt, or if Licensee shall attempt to transfer or assign this License to any third party, this License Agreement and all other licenses granted to Licensee by FASTTechnologies shall terminate automatically, immediately. Within two (2) weeks after written notice of any such termination, Licensee shall return to FASTTechnologies the original and all copies, in whole or in part, including partial copies and modifications, of the Licensed Software Programs.

## 8. Warranty

A. FASTTechnologies makes no warranty of any kind on the System. THE PRODUCT AND ANY MEDIA ON WHICH ITS SOFTWARE PORTION IS PROVIDED ARE LICENSED ON AN "AS IS" BASIS. FASTECHOLOGIES MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

B. The Software Lock(s) which may be required by the System are warranted for a period of ninety (90) days from the date of shipment from FASTTechnologies. Beyond that date, FASTTechnologies will make replacement Software Lock(s) available to Customer upon the physical return of the failed Software Lock(s) to FASTTechnologies' corporate headquarters plus Customer's remittance of FASTTechnologies' then-prevailing lock replacement fee. Customer acknowledges that the Software Lock(s) contain Customer's software license, and that as such, the Software Lock(s) are valuable and must be regarded as being the actual System itself. Customer understands that any casualty causing Customer's Software Lock(s) to be lost, stolen, or destroyed so as to be physically unrecognizable or unrecoverable shall for all purposes be regarded as the Customer's total loss of the System. FASTTechnologies shall be under no obligation to replace any Software Lock(s) which are not physically returned to FASTTechnologies' corporate headquarters.

C. Where System productivity figures, cost savings analyses or payback periods have been stated or implied by FASTTechnologies, or its personnel, orally or in writing, Customer, by its signing of the Purchase Agreement or otherwise incorporating these Standard Terms and Conditions of Sale into the Agreement, i) understands that they are not representations or warranties by FASTTechnologies but are instead only good faith estimates based on field and application data available to FASTTechnologies at the time; and ii) specifically acknowledges that all statements by FASTTechnologies and its representatives with regard to future performance of the System by Customer are speculative, and are not to be relied upon for any material purpose whatsoever.

D. FASTTechnologies warrants that it has the right to sell the System, including the right to license the associated computer programs.

## 9. Patents and Copyrights – Indemnification

A. FASTTechnologies shall indemnify and hold Customer harmless from any claims and suits for patent or copyright infringement asserted or brought against the Customer wherein the System is alleged to infringe a patent or copyright, or wherein its normal use or its use as recommended by FASTTechnologies to the Customer is alleged to constitute the infringement. No indemnity is provided against any claim or suit for patent or copyright infringement wherein any System is only an element in a combination with other products not furnished by FASTTechnologies and wherein the combination is alleged to constitute the infringement.

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Further, no indemnity is provided wherein the System is used in other than its normal way or in a way not recommended by FASTechnologies or in a process wherein the System performs less than all of the steps of the process and the process is alleged to constitute the infringement.

B. If any System which is subject to this indemnity is claimed, alleged or determined to infringe a patent issued to, or a copyright registered by, or either owned by or licensed to any third party, FASTechnologies shall have the right and option to modify that System to avoid such infringement. If, in FASTechnologies' sole opinion, such modification cannot practicably be accomplished to avoid such infringement, FASTechnologies shall have the right to terminate the Purchase Agreement without liability on the part of FASTechnologies to Customer. In such event, FASTechnologies will agree to accept return of the System by Customer and to refund to Customer the full price paid for the System less an amount for depreciation of the System, such depreciation to be calculated on a straight line basis over seven (7) years.

C. Customer shall promptly notify FASTechnologies in writing of any third party claim or suit alleging any patent or copyright infringement for which FASTechnologies is alleged to provide indemnification. In such event, FASTechnologies shall have the right in its sole discretion to elect to defend against or to settle any such claim or suit. Customer shall, at FASTechnologies' request but at FASTechnologies' expense, cooperate with FASTechnologies and provide assistance and information with respect to any claim of patent or copyright infringement. FASTechnologies shall have the right to select counsel, at FASTechnologies' expense, to defend any lawsuit for patent or copyright infringement. If Customer shall also elect to be represented by its chosen counsel, Customer shall pay the fees and expense of such counsel. FASTechnologies shall pay the full amount of any other expense of defense and also pay any damages and/or costs awarded against the Customer up to but not in excess of the full amount the Customer paid FASTechnologies for the involved product. Nothing herein, express or implied, shall be interpreted or construed to create any obligation on FASTechnologies to pay to Customer, or others, any damages, consequential or otherwise, other than those set forth above.

### 10. Limitation of Liability/Actions

A. The remedies set forth in Section 8 (Warranty) and Section 9 (Patents and Copyrights) are in lieu of all other remedies, arising out of or in connection with the use or operation of the System, FASTechnologies' LIABILITY FOR ALL DAMAGES, INCLUDING BUT NOT LIMITED TO LIABILITY FOR PATENT AND COPYRIGHT INFRINGEMENT, SHALL NOT EXCEED THE LESSER OF THE DIRECT DAMAGES OR THE CHARGES PAID TO FASTECHOLOGIES BY CUSTOMER FOR THE PARTICULAR SYSTEM. FASTechnologies shall not be liable for any lost profits, or for any claim or demand against Customer by any third party. Customer acknowledges that upon creation, and periodically thereafter, it shall be Customer's sole responsibility to preserve its own data files by making backup copies or otherwise. FASTechnologies shall not be responsible for the lost data whether or not the loss is the result of malfunction of the System, or servicing, or of Customer having given the data to FASTechnologies. IN NO EVENT SHALL FASTECHOLOGIES BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL AND/OR SPECIAL DAMAGES EVEN IF FASTECHOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OR INEVITABILITY OF SUCH DAMAGES. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MIS-REPRESENTATION AND OTHER TORTS.

B. In no event shall FASTechnologies be liable for damages of any kind or nature resulting from the use, function, misuse, malfunction, or lack of function of the System.

### 11. Premature Termination

A. FASTechnologies may, at its election, terminate the Agreement immediately and/or cancel any unfilled portion of it by written notice to the Customer if:

- 1) The Customer becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a receiver is appointed to direct the business of Customer, or if Customer sells or assigns a majority of its assets or merges or consolidates with another firm, corporation or entity.
- 2) In the sole judgment of FASTechnologies, the Customer has committed a material breach of any of the terms and conditions of the Agreement and fails to cure such breach in a timely manner to FASTechnologies' satisfaction.

If FASTechnologies so terminates the Agreement, FASTechnologies may, without limiting or waiving any other remedies available to it, offset in whole or in part its resulting damages by retaining Customer's initial payment or deposit.

### 12. Nonperformance; Force Majeure; Delays

FASTEchnologies shall not be liable for delay, no delivery, or the performance of any term or condition of the Agreement due to causes either within or beyond FASTechnologies' reasonable control, including but not limited to acts of God, natural or human-caused disasters such as flood and fire, the public enemy, war (declared or undeclared), civil disturbance, actions of or failures by third parties including suppliers, labor disputes, compliance with governmental regulations or other authority, transit interruptions, or the inability of freight forwarders or carriers to complete shipments in accordance with FASTechnologies instructions. Any delay in delivery may cause extra expense to FASTechnologies which, at FASTechnologies' option, may result in additional charges or an increase in the System purchase price.

### 13. Customer Indemnification of FASTechnologies

Customer shall indemnify and hold FASTechnologies harmless from and against any and all losses, claims, costs, expenses, damages and liabilities, including reasonable attorney's fees, which FASTechnologies may suffer or be required to pay, arising out of injury (or death) to persons, or damage to property, resulting from or pertaining to the use or operation of the System whether or not occasioned by the negligence or misconduct of FASTechnologies, its agents, employees, independent contractors or invitees.

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### 14. U.S. Export Regulations and Restrictions

FASTechnologies Systems are subject to export and other similar restrictions imposed by U.S. law. By entering into an Agreement, Customer shall be confirming to FASTechnologies that neither the Licensed Software Programs (including data as well as software) nor the System technology, and hardware, are intended to be shipped or otherwise transmitted, directly or indirectly to any restricted party inside, or to any place outside, the U.S.A. or Canada.

### 15. Returned Material Authorization

Return of material to FASTechnologies requires advance authorization from FASTechnologies' Contracts Administration Department. A Returned Material Authorization number and shipping instructions may be obtained by contacting FASTechnologies by phone at (763) 263-0611 or fax at (949) 203-6483. FASTechnologies will not accept returned material without such authorization. A Returned Material Authorization Number issued by FASTechnologies must be annotated on a packing list attached to the outside of any authorized returns.

### 16. Miscellaneous

- A. The Agreement shall be governed and construed in accordance with the Laws of the State of Minnesota, U.S.A.
- B. Sole and exclusive jurisdiction and venue of any and all claims and lawsuits relating to the System or in any way to the Agreement or these Standard Terms and Conditions of Sale shall reside in Sherburne County, Minnesota, U.S.A.
- C. The Agreement, including all attachments, shall constitute the entire understanding between the parties with respect to the subject matter of the Agreement and shall supersede all previous proposals of sale, communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter.
- D. If any of the provisions of the Agreement are deemed or adjudged invalid under any applicable statute or rule of law, those provisions shall be deemed omitted and all other terms and provisions of the Agreement shall continue in full force and effect.
- E. The Agreement shall not be assigned by Customer and any attempt by Customer to assign this Agreement shall be deemed void.
- F. The waiver on any one occasion by either party to the Agreement of any breach by the other party shall not be deemed a waiver of any subsequent breach of the Agreement.
- G. No amendment or modification of the Agreement shall be valid or binding upon either party unless made in writing and signed, respectively, by an authorized representative of Customer and by an Authorized FASTechnologies Representative.
- H. Provided that Customer has signed an Agreement incorporating these Terms and Conditions of Sale, that Agreement shall be deemed accepted by FASTechnologies upon delivery of the System notwithstanding the fact that a fully executed original has not been returned to Customer. Such acceptance shall not be interpreted or construed as acceptance by FASTechnologies of any other terms and conditions other than these Standard Terms and Conditions of Sale. FASTechnologies' failure to object to provisions contained in any communication from Customer shall not be deemed a waiver of any of the provisions of the Agreement.