

## PSYLOTECH TERMS OF SALE

**THESE TERMS OF SALE (THESE "TERMS OF SALE") GOVERN YOUR PURCHASE OF ANY PRODUCT OR SERVICE OFFERED BY PSYLOTECH, INC. ("PSYLOTECH", "US" OR "WE") THROUGH WWW.PSYLOTECH.COM (THE "SITE") OR (UNLESS OTHER TERMS OF SALE ARE EXPRESSLY AGREED BETWEEN THE PARTIES IN WRITING) BY TELEPHONE, FACSIMILE, E-MAIL, BY VISIT TO OUR PREMISES OR ANY OTHER MEANS OF ORDERING. PLEASE READ THESE TERMS OF SALE CAREFULLY. THEY CONTAIN VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. BY PLACING AN ORDER, YOU ACKNOWLEDGE THAT YOU HAVE READ, ACCEPTED AND AGREED TO BE BOUND BY THESE TERMS OF SALE, WITHOUT LIMITATIONS OR QUALIFICATIONS OF ANY SORT. THESE TERMS OF SALE ARE SUBJECT TO MODIFICATION WITHOUT PRIOR WRITTEN NOTICE AT ANY TIME IN OUR SOLE DISCRETION, PROVIDED THAT SUCH MODIFIED TERMS OF SALE SHALL APPLY ONLY TO ORDERS PLACED SUBSEQUENT TO SUCH MODIFICATION. TO THE EXTENT POSTED AT THE SITE, YOU SHOULD PERIODICALLY REVIEW THESE TERMS OF SALE TO ENSURE THAT YOU REMAIN UP TO DATE ON ALL SUCH CHANGES.**

**Date Last Modified: September 1<sup>st</sup>, 2018**

### ***Orders***

Unless you and Psylotech have executed a separate written sales agreement, then, unless such separate agreement is referenced in your order, these Terms of Sale will govern our sale of products and/or services to you, and by placing an order with us you agree to be bound by these Terms of Sale with regard to that order. **The preprinted terms of any documents, such as purchase orders, that you may submit to us in conjunction with an order for products will not alter, change or add to these terms, regardless of how we acknowledge or accept your order and regardless of the fact that such preprinted terms may contain language stipulating that they supersede these Terms of Sale.** All orders are deemed to have been placed and accepted in Evanston, Illinois. All orders are subject to acceptance by us, and once accepted, an order cannot be canceled, modified or rescheduled by you without our consent. We reserve the right to reject or cancel any order, or to limit the size of any order, at any time in our sole discretion, and also reserve the right to cancel any order if we determine you are in breach of these Terms of Sale in any way.

## ***Availability***

Availability of our products and/or services are subject to change without notice. If a product is not in stock when you place your order, we will do our best to advise you when the product will be available. Psylotech shall not be liable for any claims or damages arising in connection with products which are out of stock or otherwise unavailable. Psylotech reserves the right to discontinue the sale of any product or service at any time without notice to you or any other third party.

## ***Prices***

Prices shall be our published prices for the products or as otherwise quoted by us to you in writing. Unless otherwise specified by us, any written or electronic price quotes we may provide from time to time are valid only for the period of time specified in such quote. We reserve the right to increase the price for any product without notice to you (provided, that we will not increase prices for products which have been previously ordered by you but not yet shipped). **We are not responsible for any errors on the Site or any other media. In the event a product is listed at an incorrect price due to typographical, photographic or technical error or error in pricing information received from our suppliers or manufacturers, we reserve the right to refuse or cancel any orders placed for that product listed at the incorrect price.**

## ***Taxes; Customs; Duties***

All prices are net of any sales, use, excise, value added and similar taxes imposed by any governmental authority regardless of how denominated; and any international shipping charges, broker's fees, consular fees and customs duties, which shall all be your sole responsibility. You shall pay all such taxes or charges or provide us with a tax or levy exemption certificate acceptable to the applicable taxing or levying authority. In the event (i) we are required to pay any taxes or other charges for which you are responsible, you shall promptly repay these amounts to us immediately upon receipt of our invoice, or (ii) we ship any product(s) internationally which have been pre-paid, we have the right to cause such product(s) to be returned or otherwise disposed of in the event you fail to pay any customs or duties required to be paid in accordance with the agreed-upon shipment terms.

## ***Payment Terms***

We accept payment solely by wire transfer; provided, that we may elect, on a case-by-case basis, to accept payment by check or other means. Unless otherwise mutually agreed between the parties in writing, payment terms shall be 50% down payment at the time of issuance of the applicable purchase order or invoice, and the remaining

50% due the date of shipment of the applicable product via letter of credit. For orders originating outside of the United States, we may in addition to other security, require the issuance of a letter of credit. We will accept your purchase order or payment by other means only upon credit which is approved by us in our sole discretion. You agree not to withhold from or offset against any amount owing to us for any reason. You also agree to address any and all product and transaction claims solely with us and not to initiate, under any set of circumstances, charge refusals or charge-backs, and you agree to indemnify us for any expenses or damages we may suffer on account the initiation by you of any such charge refusal or charge-back. In addition to our other rights, we reserve the right to cancel or suspend delivery of all or part of an order if you are delinquent in any payments owing to us. We shall retain a purchase money security interest in any products delivered to you until we have received payment in full. As a condition to extending you credit terms you consent to the filing of financing statements covering such products and their proceeds that we deem necessary to perfect our security interest; it being understood that nothing herein requires that we file any such financing statement. You agree to pay, in connection with any past due balance, (i) a late payment charge of 1½ percent per month, but not in excess of the lawful maximum, and (ii) all costs incurred by us in collecting such past due balance, including, without limitation, court and arbitration costs and attorney's fees.

### ***Shipping***

All products are shipped Ex Works Air from our shipping point. You will be responsible for any loss or damage to a product once we give it to the common carrier for delivery to you. Unless you request a specific means of delivery which we are able to accommodate, we will select the common carrier. You are responsible for all transportation and related shipping costs (including any duties charged in connection with international shipments), the charges for which will be separately stated on our invoice to you or otherwise provided on the Site at the time of purchase. Shipping dates are approximate. It is your responsibility to provide accurate contact information that allows the shipper to contact you when shipment is made. Additional storage and/or shipping charges and other warehouse charges may apply if we or the shipper is unable to contact you, or if you are not available to receive the shipped products, or if products are redirected at your request. If a shipping rate is quoted at an incorrect rate due to typographical error or error in pricing information, we shall have the right to refuse, adjust or cancel the applicable order whether or not the order has been confirmed or whether or not payment has been remitted. We shall make reasonable efforts to meet your specified delivery date, but in no case shall we be liable to you if we are unable to meet such date. We may make deliveries in installments. Any delay in any one installment will not give you the right to cancel that or any other installment. You must submit any claim for shortages to us within five (5) days of the arrival of the products at your facility.

## **Returns**

You must first receive a Return Material Authorization ("RMA") from us before completing a product return, regardless of the reason for the return. This applies to all product returns permitted under these Terms of Sale. We are not obligated to accept any return without a proper RMA. Unauthorized returns will be reshipped to you at your expense. We also reserve the right to impose reasonable handling charges in the event we either accept or reject an unauthorized return, as well as re-stocking fees as posted at the Site or otherwise charged from time to time. Current policy is to accept returns within 30 days of the shipment date with a 15% re-stocking fee, so long as the applicable product is returned to us in the same condition in which it was originally shipped, and has not been damaged or altered in any way. Decisions in respect of eligibility of returns shall be in our sole discretion.

## **Acceptance**

It is your responsibility to inspect all products purchased from us and to notify us immediately if you believe you should not accept any product. You must promptly tell us specifically why you are rejecting the products and why you believe they are non-conforming. We will only accept properly rejected products pursuant to an RMA within five (5) days of their shipment to you. At our discretion, we will either exchange or repair the non-conforming products. Returned products must be in their original shipping cartons, complete with all packing materials and packed in the same manner in which such products were shipped, and shall be returned to our designated return location freight prepaid. No returns will be accepted beyond ten (10) days after the applicable RMA was issued.

## **Warranty; Disclaimer**

We warrant that upon delivery to you (and at no other time), the products purchased will be free from material defects in materials and workmanship for a period of 12 months following the applicable shipment date. Products are warranted only to the extent properly used for their intended purposes – such warranty does not cover what we determine to be improper use, damage caused by you or any third party, use in extreme conditions, normal wear and tear and/or any product modified by you or any third party. Except for this limited warranty which we make solely to you and to the extent permitted by law, WE MAKE NO WARRANTIES, GUARANTEES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, OR RESPECTING NON-INFRINGEMENT OR AS TO THE ACCURACY OF ANY CONTENT IN ANY PSYLOTECH LITERATURE OR POSTED ON THE SITE. IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOUR USE OF PRODUCTS PURCHASED FROM PSYLOTECH

COMPLIES WITH LOCAL JURISDICTION CODES AND ALL REGIONAL, NATIONAL AND INTERNATIONAL LAWS AND REGULATIONS. Our warranty obligations with respect to products and your exclusive rights under our warranty are limited, at our option, to repair or replace the products pursuant to the Return Material Authorization procedure described above, or to refund the purchase price paid by you for the affected products.

### ***Reselling by You***

You shall not resell or distribute any products purchased from us. You agree to indemnify and hold us harmless from any claims asserted by a third party, regardless of the theory under which such claim is asserted, arising out of the resale or distribution of any products by you. Also, you are not authorized to use any of our trademarks or trade names or those of our manufacturers or suppliers without our or their consents, as the case may be.

### ***Unauthorized Use of Products***

The products sold by us are not intended or authorized for use with any real-time application in which failure of the products could create a situation where personal injury or death may occur. Many of our products, if not used correctly, can cause fires, injury or even death. While we may, from time to time, offer tutorials or guides, you are ultimately responsible for ensuring that you are using all products purchased from us in a safe and appropriate manner. **Psylotech shall not be liable for any claims, damages or injuries caused by your negligence, the negligence of any of your customers, the misuse of any of our products or services by you or any third party to which you provide access to our products, or any other damages or injuries arising out of your use of any of our products.**

### ***Limitation of Liability***

NEITHER OF US SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, PROCUREMENT COSTS, OR BUSINESS INTERRUPTION COSTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL WE BE LIABLE TO YOU FOR ANY DAMAGES IN EXCESS OF (X) THE PURCHASE PRICE OF THE PRODUCTS GIVING RISE TO SUCH CLAIM REGARDLESS OF THE THEORY UNDER WHICH SUCH CLAIM IS ASSERTED, OR (Y) FOR ALL OTHER TYPES OF CLAIMS, THE AGGREGATE AMOUNT PAID BY YOU TO PSYLOTECH DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICABLE CLAIM. IN ADDITION, WE WILL NOT BE LIABLE TO YOU OR ANY OTHER PARTY IN RESPECT OF (X) INJURIES OR DEATHS RESULTING FROM FRAME USE OR ANY MISUSE OR ANY PRODUCT, AND/OR (Y) DAMAGES ARISING OUT OF ANY

## PRODUCT, OR SYSTEM INCLUDED THEREIN, PRODUCING OR GENERATING INACCURATE DATA.

The collective limitations on our liability under these Terms of Sale apply also to our suppliers who are intended beneficiaries of these limitations. To the extent the foregoing limitations of liability are not enforceable under applicable law for any reason, they shall not apply to you.

### ***Export Control***

You agree not to export or re-export any product or technical data except in full compliance with the export control laws and regulations of the United States government, its departments and agencies, or import or re-export any product or technical data except in full compliance of the laws of the jurisdiction into which, or from which, such product or technical data is being imported or re-exported.

### ***Force Majeure***

Except for payment obligations, neither of us shall be liable for any failure to perform due to causes beyond our reasonable control, respectively, including but not limited to acts of God or nature, war, fire, bad weather, flood, accident, labor trouble or shortage, civil disturbance, plant shutdown, equipment failure, voluntary or involuntary compliance with any applicable governmental regulation or order, or shortage or inability to obtain (on terms deemed practicable by the party affected) any raw materials (including energy), equipment or transportation. In cases of material shortages we reserve the right to allocate the delivery of affected materials as we see fit. The time for performance shall be extended by the period of the applicable force majeure event.

### ***Intellectual Property***

You hereby recognize Psylotech's intellectual property rights in its name, the Site, its products, its software and all other intellectual property owned by Psylotech, and nothing herein shall be deemed to assign ownership of any such intellectual property to you. Our intellectual property may include, but is not limited to, patents, patent applications, copyrights (including drawings, prints, manuals and specifications), trademarks and service marks (registered or unregistered) and applications thereof, "trade dress", and technical, proprietary and confidential information. You affirm that you are obtaining the products or services from us for use as intended. You will not reverse-engineer or use any product to develop similar products to those purchased from us or any of our agents, nor will you permit any third party to do the same. For purposes of these Terms of Use, "reverse engineering" includes, but is not limited to, disassembly of a product or discovery of the components of a product, or utilization of

our specifications and/or literature for the purposes of developing one or more similar or derivative products or services that can be reasonably regarded as competitive with our offerings.

### ***Independent Contractors***

Neither of us shall be deemed to be the agent or legal representative of the other for any purpose whatsoever. We are independent contractors and neither of us shall represent or hold ourselves out in any other capacity.

### ***Compliance with Laws***

Each of us agrees to comply with all laws and regulations applicable to our respective performance under these Terms of Sale and in the conduct of our business operations and to be responsible for obtaining any approvals or licenses necessary to maintain such compliance.

### ***Assignment***

You may not assign these Terms of Sale, by operation of law or otherwise, without our prior written consent. Any assignment attempted in violation of this provision shall be void and of no legal effect.

### ***Representations and Warranties***

You hereby represent and warrant that you have the authority to enter into this Agreement and that these Terms of Use are binding on you and/or the company for which you are an employee or agent.

### ***Governing Law***

These terms and conditions shall be governed and construed in accordance with the laws of the state of Illinois excluding its choice of law provisions. The United Nations Convention for the International Sale of Goods shall not apply.

### ***Arbitration***

We agree to attempt to resolve any disputes amicably through our respective representatives. If, after thirty (30) days we are unable to do so, then we each agree that any claim or controversy of any sort relating to our agreement shall be determined by arbitration in Chicago, Illinois, before one arbitrator. At the option of the first to commence an arbitration, the arbitration shall be administered either by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, or by the American Arbitration

Association pursuant to its Commercial Arbitration Rules. The arbitrator shall have no power to add to, delete from or modify these Terms of Sale. Judgment on the arbitrator's award may be entered in any court having jurisdiction. This clause shall not preclude either of us from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

### ***Other Sales***

Nothing herein shall be deemed to limit or restrict our ability to sell products or services to, or otherwise work, with any other company, business or individual, including, without limitation, your direct competitors.

### ***Entire Agreement***

These Terms of Sale represent our entire agreement with respect to your order. No modification or amendment or waiver of rights will be effective except in a written document signed by both of us. Waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. We reserve the right to alter or change these Terms of Sale at any time with respect to future orders that you may place with us.

### ***Severability***

If any provision of these Terms of Sale are held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction or arbitral tribunal, such provision shall be deemed severed from these Terms of Sale and the validity of the remainder of these Terms of Sale shall not be affected thereby.

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