

HEYWARD SERVICES STANDARD TERMS AND CONDITIONS OF SALE

1. **Purchase Agreement.** Purchaser agrees to purchase the Products and Services from Heyward in accordance with this Agreement and with these terms and conditions. The Purchase Price does not include videotaping services, safety equipment, or installation or unloading of the Products.

2. **Payment.**

a. Standard payment terms are 100% net 30 days. If Purchaser defaults in making any required payments, Purchaser shall also be liable for interest that will accrue beginning on the date which the payment was due, and continuing until paid in full, at a rate equal to the lesser of (i) one and one-half percent (1.5%) per month; or (ii) the maximum allowed by law. Purchaser shall pay all invoices in full as and when due and such invoices are not subject to any set-offs or adjustments. If any invoice or payment is not paid when due, then Heyward may take any of the following actions: suspend performance; terminate the contract for default; require Purchaser to pay the full contract price; and take any other actions or pursue any other remedies under applicable law.

b. All purchase orders received are subject to credit approval of Heyward. Heyward reserves the right to suspend or delay shipments of Products or performance of Services if in Heyward's opinion, there is sufficient reason to suspect potential payment default. In such a case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Purchaser may be required before shipment of Products or completion of Services. Heyward's acceptance of less than full payment shall not be a waiver of any of its rights.

c. Under no circumstances will Heyward accept any backcharges from the contractor or owner, unless Heyward agrees to pay that backcharge in writing.

3. **Warranties.**

a. **Products.** Heyward makes no warranty with respect to Products and all Products are sold "AS IS" and without warranty from Heyward, except as provided on **Exhibit C** attached to the Agreement. However, Heyward shall, to the extent assignable, assign any warranty it receives from the manufacturer relating to the Products to Purchaser.

b. **Services.** Heyward makes no warranty with respect to the Services. The Services are provided for the Purchaser's convenience only and Purchaser shall not rely on the Services.

c. HEYWARD DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AS TO THE PRODUCTS OR SERVICES. This limited warranty is non-transferable. Employees are not authorized to offer different or additional warranties or remedies, and descriptions, representations and other information or claims made by employees are not binding on Heyward unless in writing and signed by an officer of Heyward.

4. **Services.** If Heyward provides a field representative ("**Heyward Representative**"), the Heyward Representative shall perform the Services in an advisory capacity. The Heyward Representative will not superintend or supervise personnel supplied by the Purchaser or train them in their respective crafts in connection with the performance of their work. Neither Heyward nor the Heyward Representative shall be responsible for any acts, omissions, or workmanship of employees, contractors, subcontractors, or agents of the Purchaser. If Purchaser is required to, or wishes to, video tape Heyward personnel for O&M training purposes Heyward requires completion of the [Video Agreement Form](#), available online. The Heyward personnel shall read this agreement at the start of any taped event.

Purchaser's Responsibility. Purchaser shall furnish at his own expense and responsibility, all cranes, rigging, tools, facilities and equipment, material and repair or replacement parts, together with sufficient skilled and common labor and foreman, supervisors, and interpreters for the efficient performance of all work. Purchaser shall further designate a person in Purchaser's organization to represent Purchaser at the site in all contacts and dealings with the Heyward Representative. The Purchaser's representative shall be responsible for coordinating the work and shall be in charge of labor, supplies, tools, and facilities to be furnished by the Purchaser. Purchaser's representative shall inspect and shall be authorized to accept any Products delivered and all details of the Services as they are completed.

5. **Shipment.** All deliveries of Products are CPT (Incoterms). Any Services shall be performed at the location the parties agree to in writing. All delivery dates for Products or Services are Heyward's estimate only and time shall not be deemed of

the essence with regards to the delivery of Products or completion of Services. Heyward shall not be liable to Purchaser for any delay in performance or delivery. All risk of loss of Products shall pass to Purchaser when Heyward delivers the Products to the carrier for delivery to Purchaser. Delivery and performance are conditional on Heyward's timely receipt of documents necessary for the completion of the order and any required down payments or periodic payments. Partial deliveries are permissible. Products held for the Purchaser or stored for the Purchaser shall be at the risk and expense of the Purchaser.

6. **Force Majeure.** The performance of either party pursuant to this Agreement shall be excused to the extent the performance is delayed or prevented by reason of an event of Force Majeure. A Force Majeure event is an event that (a) adversely and directly affects, prevents or delays either party (including such party's subcontractors or vendors) in the performance of its obligations in accordance with the terms of this Agreement; (b) is beyond the reasonable control of the affected party; and (c) is not the result of the affected party's willful misconduct, negligent act or omission, unlawful conduct, or breach of this Agreement. Force Majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, fire, epidemics and pandemics (including, without limitation, COVID-19), quarantine restrictions, riots, strikes, civil insurrections, freight embargoes, unusually severe weather, and natural disasters (including, without limitation, floods, earthquakes, tornadoes, and hurricanes). If a party claims there is an event of Force Majeure, such affected party shall notify the other party of the nature and cause of the event in writing within five (5) business days after the affected party becomes aware, or should have become aware with the exercise of reasonable diligence, of the Force Majeure event. Regardless of the cause, each party shall use all commercially reasonable efforts to remove or mitigate the impact of the event delaying or preventing performance. Provided there is no concurrent cause to the delayed or prevented performance for which the affected party is responsible, the date of delivery or time for performance under the Agreement shall be equitably adjusted by a period of time reasonably necessary to overcome the effect of the Force Majeure event. If any Force Majeure event or combination of Force Majeure events delays or prevents the affected party's performance for a time period greater than one hundred and eighty (180) calendar days in the aggregate, either party shall have the right to terminate this Agreement.

7. **Heyward's Liability.** IN NO EVENT SHALL HEYWARD'S LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVER EXCEED THE PURCHASE PRICE OF THE PRODUCT OR SERVICE OR PART OF THE PRODUCT OR SERVICE AT ISSUE. HEYWARD SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, OR COSTS INCURRED IN DISMANTLING OR MOVING OTHER EQUIPMENT OR BUILDING OBSTACLES TO ALLOW FOR THE REMOVAL OF NON-CONFORMING PRODUCT OR PARTS OF THE PRODUCT, WHETHER ARISING FROM THE SALE OF PRODUCTS, INSTALLATION OR SETUP OF PRODUCTS, ANY TRAINING, ANY DEFECT IN THE PRODUCTS OR SERVICES, ANY NON-CONFORMITY WITH WARRANTIES, ANY USE OR INABILITY TO USE THE PRODUCTS OR OTHERWISE. These Terms contain Purchaser's sole and exclusive remedies relating to the Agreement, a breach of the Agreement, these Terms, a breach of these Terms, the Products or the Services, regardless of the theory of recovery.

8. **Returned Goods.** Heyward will not accept Products for return unless prior written permission of Heyward has been obtained.

9. **Security Agreement.** Purchaser grants Heyward a continuing purchase money security interest in all Products sold or delivered to it and to the proceeds of those Products (collectively, the "**Collateral**") to secure the full payment of the purchase price of the Products and all other obligations of Purchaser. Purchaser authorizes Heyward to file all financing statements, continuation statements and other documents necessary or desirable to establish, perfect, maintain, preserve and enforce Heyward's security interest in the Collateral.

10. **Confidentiality.** Purchaser shall not disclose to any person any confidential or proprietary information ("**Confidential Information**") that Heyward provides to Purchaser unless the disclosure is agreed to in writing by Heyward or the Confidential Information is otherwise generally available to the public, unless such Confidential Information was (i) improperly disclosed by Purchaser or (ii) disclosed by a third party contrary to any applicable restriction on disclosure. No license of intellectual property rights in the Products is granted or implied by these Terms.

11. **Termination.** Without limiting Heyward's other rights and remedies available under applicable law, Heyward may suspend performance and delivery, or terminate performance and delivery, if Purchaser:

- a. makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Purchaser's property;
- b. becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; or

c. fails to perform or observe any of its obligations to Heyward under the Agreement, these Terms or under other existing or future contracts between Heyward and Purchaser or otherwise, including payment of any purchase price, fees or charges when due.

12. Indemnity. Purchaser shall indemnify and hold Heyward harmless from and against all damages, liabilities, claims or expenses (including reasonable attorneys' fees) arising out of or relating to: (a) improper selection, application, installation, use or incorporation of the Products or Services; (b) Products damaged during or after delivery; (c) damage caused by normal wear and tear; (d) use under circumstances exceeding specifications or limitations or uses which were not foreseeable to Heyward based upon Purchaser's disclosures related to the Agreement; (e) abuse or accident; (f) unauthorized repair or alteration; (g) improper storage or maintenance; (h) damage caused by natural calamities; or (i) claims of infringement of any patent, trademark, copyright or other third party interest arising out of Heyward's compliance with any of Purchaser's instructions, recommendations, specifications or limitations. At Heyward's request, Purchaser shall defend Heyward at Purchaser's expense, with counsel acceptable to Heyward, against any such claim made against Heyward.

13. Choice of Law, Venue and Consent to Jurisdiction. North Carolina law, excluding its conflict of laws principles, applies to any dispute or claim relating to the Products or Services. Except with respect to any action instituted by Heyward for equitable or comparable relief, including an action for temporary or permanent injunctive relief, or for an action instituted by Heyward for recovery of possession of the Products, including replevin, claim and delivery, attachment, the North Carolina State Courts and the United States District Court for the Western District of North Carolina shall constitute the exclusive forums for the adjudication of all disputes arising out of or relating to the Agreement, these Terms, any dispute under the Agreement or these Terms, or to the Products and Services.

14. Errors. Heyward reserves the right to correct clerical or stenographic errors or omissions.

15. Severability. In the event any of the provisions of the Agreement or these Terms are held to be invalid by any court of competent jurisdiction, such provision(s) shall be deemed to be severable and the Agreement and these Terms shall then be construed and enforced in accordance with the remaining provisions.