

Lake Image Systems, Inc.
205 Summit Point Drive
Henrietta, NY 14467
(585) 321-3630 Phone
(585) 321-3788 Fax
www.lakeimage.com



**LAKE IMAGE SYSTEMS, INC.
TERMS AND CONDITIONS OF SALE**

1. **Contract - Entire Agreement.** These terms and conditions and the additional terms, conditions and specifications in the order acknowledgment or invoice issued by LISI (the "Contract") contain the final and entire contract between LISI and Buyer, and no representation, affirmation of fact, course of prior dealings, promise or condition in connection therewith, course of performance or usage of the trade not specified in this Contract shall be binding on either party. In no event shall transactions be subject to any affirmation of fact or promise that relates to the application, performance or description of the products or services unless such affirmation of fact or promise is in writing and signed by one of LISI's authorized representatives or is confirmed by LISI's signed acknowledgment. Any terms and conditions of any purchase order or other form or document issued by Buyer, irrespective of their materiality, that are either different from, or additional to, the terms and conditions expressed herein are objected to and excluded and shall not be binding on LISI unless expressly agreed to in a written acknowledgment issued by LISI, and performance shall not constitute agreement to any such different or additional terms or conditions. No agreement or other understanding purporting to add to or to modify the terms and conditions of the Contract shall be binding upon LISI unless agreed to by LISI in writing.

2. **Time of Completion/Delivery.** Completion/delivery dates are approximate and are based upon prompt receipt by LISI of all necessary information and cooperation. LISI shall use commercially reasonable efforts to complete the services and/or deliver the products on the date(s) set forth in this Contract but LISI shall not be liable for any delay in completion or delivery. Unless otherwise indicated in this Contract, all shipments hereunder shall be F.O.B. place of shipment. Risk of loss of, or damage to the products shall pass to Buyer upon delivery thereof to the carrier. If Buyer shall require postponement of shipment beyond the date(s) specified in this Contract, and if LISI consents to such postponement, Buyer shall nonetheless pay the contract price on the date due (being the same date such payment would have been due if there had been no postponement). Buyer shall in addition pay on demand all storage charges resulting from such postponement and, notwithstanding any provision of the contrary herein contained, the risk of loss of, or damage to, the products whose shipment has been postponed, shall pass to Buyer upon the delivery date specified in this Contract. Buyer may not under any circumstances return the delivered products to LISI without the prior written consent of LISI.

3. **Price – Payment.** LISI's price or rates shall be as specified in this Contract. Unless otherwise stated in the Contract, payment shall be net 30 days of LISI's invoice. LISI reserves the right to refuse delivery except for cash, including payment for all products previously delivered, and to stop delivery, whenever, in the sole discretion of LISI, there is doubt as to Buyer's responsibility. A finance charge equal to the lesser of (a) 1-1/2% per month (equivalent to 18% per annum) or (b) the highest rate permitted by applicable law, will be charged on all past due balances. In addition, if Buyer shall fail at any time to make any payment when due hereunder or otherwise to fulfill this Contract, LISI may, without prejudice to other lawful remedies, (i) defer further deliveries or other performance by it under this Contract until all such defaults by Buyer have been fully cured, or (ii) cancel this Contract. Security title and right of possession to the products sold hereunder and the proceeds thereof shall remain with LISI until all payments hereunder shall have been made in full,



and Buyer agrees promptly upon LISI's request to do all acts necessary to perfect and maintain such security title and right in LISI. If LISI permits cancellation of an order before delivery, Buyer shall pay a restocking charge equal to twenty percent (20%) of the order price within 30 days of LISI's invoice.

4. **Additional Charges.** All prices are exclusive of any applicable federal, state or local duty, sales use, excise or other similar taxes, now in effect or here after imposed. All such taxes shall be for Buyer's account and shall either be paid directly by Buyer or added to the price herein provided. In the event that the price of any product includes transportation charges, any increases or decrease in transportation charges shall be for Buyer's account.

5. **Limited Software License.** LISI's product includes integrated, proprietary software (the "Software"). LISI hereby grants to Buyer a non-exclusive license to use the Software solely as part of LISI's product. Buyer shall not reproduce, modify, translate, reverse engineer, decompile or disassemble any of the Software. The Software may not be transferred or assigned except as part of the transfer of the entire LISI product.

6. **Limited Warranty.**

(a) LISI warrants for a period of six months after delivery or completion that: the product(s) and service(s) furnished hereunder shall conform to the specifications set forth in this Contract; and the products when properly used and maintained will be free from defects in material and workmanship. Buyer shall notify LISI in writing within ten (10) days of discovery of any breach of LISI's warranties and shall provide satisfactory proof thereof. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND LISI EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OR ANY OTHER MATTER SHALL NOT APPLY AND LISI DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES WITH RESPECT TO TITLE, NON-INFRINGEMENT, VALIDITY AND ENFORCEABILITY. BUYER REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN.

(b) LISI's warranties do not extend to (i) any damages or losses due to misuse, accident, disaster, abuse, neglect, normal wear and tear, improper maintenance or operation or damage or losses due to work not performed by LISI or its subcontractors; (ii) parts not supplied by LISI or its subcontractors; (iii) damage or loss caused by equipment or any part thereof that has been repaired or altered by Buyer or any third party; (iv) reasonable and necessary maintenance; or (v) defects or nonconformity arising out of incorrect or insufficient data, drawings, specifications or instructions furnished by Buyer whether with respect to the performance of the equipment or material or the conditions under that such performance is required or otherwise.

7. **Buyer's Remedies.** In the event any product or service furnished hereunder is found not to conform to any warranty expressed in this Contract, LISI will, at its option, either (a) re-perform such service or repair or replace such product, or (b) repay the contract price herein of such service or such product upon its return by Buyer to LISI. LISI's delivery hereunder of any product(s) or service(s) not in conformity with this Contract shall not constitute a breach of this Contract and shall not affect Buyer's obligations with respect to any other products or services furnished hereunder. Buyer's remedies shall be limited exclusively to re-performance, replacement or repayment, as LISI may elect in its sole discretion. Return and shipment of products to LISI for repair or replacement shall be a Buyer's expense and risk. Shipping materials must be comparable to those used by LISI to ship its products. If LISI determines that a repair or replacement is covered by LISI's warranty in Section 6, LISI shall pay the cost of shipping the product back to Buyer.

8. **Limitation of Liability.**



(a) LISI SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM THE SERVICES PERFORMED OR PRODUCTS SOLD BY LISI OR OTHERWISE IN CONNECTION WITH THIS CONTRACT. THE LIMITATIONS AND PROTECTIONS AGAINST LIABILITY AFFORDED LISI HEREIN SHALL APPLY TO ANY ACTION OR CLAIM IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED OR PRODUCTS SOLD BY LISI, WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE (INCLUDING NEGLIGENCE, WARRANTY AND STRICT LIABILITY).

(b) LISI's cumulative limit of liability for said claims shall in no event exceed the purchase price of the products or services or portion thereof with respect to that loss or damage is claimed. Should the remedy of repair or replacement of defective products or reperformance of the defective services be found inadequate or to have failed of its essential purpose for any reason whatsoever, Buyer agrees that return to it of the purchase price of the particular product or service by LISI shall prevent the remedy from failing of its essential purpose and shall be considered by Buyer a fair and adequate remedy. The remedies set forth herein are exclusive.

(c) No action may be maintained or proceeding commenced by Buyer or others against LISI or its owners or employees with respect to products or services furnished hereunder unless a timely written claim has been made in accordance with Section 6 above and unless such action or proceeding is commenced within twelve (12) months of LISI's completion of the services or delivery of the product to which such action or proceeding relates.

(d) LISI hereby assigns to Buyer all warranties LISI receives from the manufacturers of equipment or components installed by LISI pursuant to this Contact, and LISI shall have no obligations under Sections 6 or 7 with respect to equipment or components covered by these manufacturers' warranties.

(e) LISI shall not be liable for, and Buyer hereby releases, indemnifies and holds LISI harmless from, any claims, suits, damages, losses or liabilities arising from LISI's performance of this Contract, including, but not limited to, personal injury (or death resulting therefrom) or property damage, unless caused by the gross negligence or willful misconduct of LISI.

(f) Buyer shall indemnify LISI from and hold LISI harmless against any claims, suits, damages, losses or liabilities arising out of Buyer's use of the products sold to Buyer pursuant to this Contract.

9. **Force Majeure.** LISI shall not be liable for any delay or impairment of performance resulting in whole or in part from fires, floods, explosions, accidents or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo, delays, government allocations or priorities, shortages of transportation, equipment, fuel, labor or materials, severe weather conditions, changes of law or regulation, acts of Buyer or any other circumstance or cause, whether or not similar to any of the foregoing, beyond the reasonable control of LISI.

10. **Notice.** Any notice, request authorization, consent, waiver or other communication provided for or permitted by this Contract to be made upon, given or furnished to either party shall be sufficient only if sent by certified or registered mail, return receipt requested, to the address of the receiving party set forth on the face of this Contract.

11. **Waiver.** A party's waiver of any breach or failure to enforce any provision of this Contract or any other right shall not be construed as a waiver of any other breach of the same or any other provision or right.



Lake Image Systems Inc.

12. **Assignment; Transfer.** Neither this Contract nor any rights or obligations hereunder may be assigned or otherwise transferred by Buyer whether by operation of law or otherwise, unless LISI shall have consented in writing to such assignment or transfer.
13. **Cost of Collection.** In the event Buyer shall default in Buyer's obligations hereunder, Buyer shall be liable for LISI's costs of collection, including reasonable attorneys' fees and expenses.
14. **Designs; Etc.** All designs and other intellectual property embodied in LISI's products or in any drawings or other documents provided by LISI pursuant to this Contract shall remain the exclusive property of LISI and shall be maintained in strict confidence by Buyer, but Buyer is hereby granted a non-exclusive license to use the same solely to install, maintain, operate and repair the LISI products purchased pursuant to this Contract.
15. **Governing Law; Etc** The Contract shall be governed by and construed in accordance with the laws of the State of New York without regard to any conflict of law doctrine. Each party to this Agreement submits to the exclusive jurisdiction of the state and federal courts sitting in Monroe County in the State of New York, and waives any jurisdictional, venue or inconvenient forum objections to such courts. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be limited or eliminated to the minimum extent necessary and this Agreement shall otherwise remain in full force and effect and enforceable.