1. CONTRACT. The “Contract” is the legally binding agreement for Buyer’s purchase of the goods and services (“Goods” and “Services”) FLIR will provide Buyer pursuant to Buyer’s purchase order (the “Purchase Order”). These Terms and Conditions, FLIR’s Quotation, if any, and Buyer’s Purchase Order comprise the Contract. Conflicts between and among the terms and conditions of those documents shall be resolved according to the foregoing order of precedence. The Contract states the parties’ entire agreement, superseding prior discussions, correspondence, negotiations and proposals. Buyer’s preprinted terms, including those in Buyer’s Purchase Order, shall not apply to the Contract, and FLIR objects to such terms. This Contract shall only be modified in writing and signed by the parties.

2. ACCEPTANCE OF CONTRACT. FLIR’s Quotation offer, unless it expressly states otherwise, may be accepted within 30 days of the date of the Quotation, or until FLIR withdraws the Quotation, whichever is earlier. The Contract shall become binding when FLIR’s authorized representative issues a written confirmation of the Purchase Order.

3. CHANGES. Buyer, in writing, may: (1) make changes to drawings or specifications; (2) make additions to or deletions from quantities ordered; (3) change the delivery schedule; (4) alter the method of shipment or packing; and, (5) change the place of delivery. If any change causes an increase or decrease in cost of the work or materials to be furnished under the Contract, or affects the warranty, FLIR shall notify Buyer within ten calendar days after receipt of Buyer’s written change notice. For changes in cost or delivery, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Contract shall be modified in writing. If the parties cannot agree on an equitable adjustment, FLIR will not be obligated to accept the proposed change and the Contract shall remain unmodified.

4. PRICE AND PAYMENT. Unless expressly stated otherwise in writing by FLIR, the Purchase Price excludes all charges and expenses connected to carriage of the Goods to Buyer, and all taxes and customs duties of any kind that either party is required to pay with respect to the sale of Goods and Services covered by this Contract, but includes packing costs. Buyer shall pay FLIR in accordance with FLIR’s proposal, quotation, and/or order acknowledgement in U.S. funds within 30 days, conditioned on approved credit, after the date of FLIR’s invoice. Buyer’s submission of its Purchase Order creates an express security agreement, granting FLIR a security interest in the Goods, until Buyer pays the entire Purchase Price. FLIR may issue its invoice for the purchase price for Goods, upon shipment, and for Services, upon completion. FLIR may be entitled to invoice for progress payments as delineated on the face of the proposal or order acknowledgement. If partial shipments are made, FLIR may submit its invoices upon shipment for those partial shipments. Unpaid invoices shall be due and payable to that shipment. If Buyer is not located in the United States, Buyer shall provide FLIR with an acceptable letter of credit in the amount of the Purchase Price, either issued or confirmed by a major U.S. bank, with expiry date 30 days after shipment and partial drawings permissible if agreed to by the parties. Payment under the letter of credit shall be made upon presentation of invoice (for progress payments), or upon presentation of bill of lading or other evidence of delivery. Buyer’s purchase from FLIR, even in accordance with this limited warranty, the Buyer is responsible for obtaining FLIR’s advance authorization to return Goods and for the cost of shipping and any other charges incurred in sending the Goods to the authorized service center specified by FLIR. If FLIR determines that the subject problem with the Goods is within this warranty coverage, FLIR will pay for the return of the Goods to the Buyer. If FLIR determines that the problem with the Goods is not covered by warranty, the Goods shall be returned to FLIR at Buyer’s expense; however, if FLIR agrees to repair or replace the Goods, Buyer shall pay the cost of returning the Goods to Buyer. The turnaround time on repairs will usually be five working days or less. However, FLIR accepts no liability for additional days required for repair. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WITH RESPECT TO THE GOODS OR ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

8. WARRANTY. FLIR warrants that the Goods will conform to published specifications and be free from defects in material for 365 days from the date of delivery. FLIR warrants repairs and spare or replacement parts manufactured by FLIR for 180 days from the date of delivery or through the expiration of the initial 365 day warranty period, if applicable, whichever is longer. Buyer shall report any claimed defect in writing to FLIR immediately upon discovery and in any event, within the warranty period. If FLIR, at its sole option, will repair the Goods or furnish replacement equipment, or parts thereof, at the appropriate FLIR service center nearest to Buyer. This warranty does not extend to installation of the Goods provided by third parties, and is void if the Goods have been repaired, altered or modified in any manner by persons other than FLIR or FLIR’s designee without FLIR’s prior written approval. No Goods furnished by FLIR shall be deemed to be defective by reason of normal wear and tear, or Buyer’s failure to properly operate or maintain the Goods in accordance with good industry practices or specific requirements or instructions of FLIR. The repair or replacement of the Goods by FLIR under this Section shall constitute FLIR’s sole obligation and Buyer’s sole and exclusive remedy for all claims of defects. If that remedy is adjudicated to be insufficient, FLIR shall refund Buyer’s paid purchase price and have no other liability to Buyer under the Contract. All warranty repairs must be performed at an authorized FLIR service center. Buyer shall submit Goods to FLIR, prepayment therefor, at the appropriate FLIR service center nearest to Buyer. This warranty is for the benefit of Buyer and Buyer’s customer, transportation delays, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of FLIR. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended at least by the length of time lost due to such delay. FLIR shall not be liable for any damages resulting from any delay in delivery. FLIR, at its discretion, reserves the right to deliver early should it deem that the circumstances warrant it.

9. CONFIDENTIALITY AND INTELLECTUAL PROPERTY. All technical and commercial information and ideas which FLIR has supplied or shall supply Buyer, excluding public domain information or property in Buyer’s possession in tangible form before receiving such information from FLIR (“Confidential Information”), is proprietary to FLIR and disclosed to Buyer in confidence for the limited purpose of assisting Buyer in the evaluation or use of FLIR’s products. Buyer shall not, without FLIR’s prior written consent, disclose or make available such Confidential Information to any other person or use such Confidential Information, except for such limited purpose. All Confidential Information shall be returned to FLIR on demand, and, in any event, upon termination or cancellation of the contract under which Buyer is using FLIR’s products.

In addition to FLIR’s other remedies, Buyer agrees that any benefit or property derived by Buyer from any unauthorized use of Confidential Information shall be the sole and exclusive property of FLIR. Sale of
products to Buyer does not convey a license, implied or otherwise, under any patent, copyright, trademark or trade secret in which FLIR has an interest, nor does it convey rights to any descriptive data, including but not limited to FLIR’s drawings, schematics, software, secrets, processes, or tools.

10. NO REVERSE ENGINEERING. It is an express condition of this Contract that Buyer shall neither reverse engineer, decompile, deconstruct, disassemble, synthesize, or extract any element of and/or otherwise discover any Confidential Information, nor request nor accept any disclosure of Confidential Information from a third party who reverse engineers, decompiles, deconstructs, disassembles, synthesizes, or extracts any element of and/or otherwise discovers any Confidential Information, nor otherwise attempt to derive Confidential Information contained or embodied in FLIR’s products. In the event that Buyer breaches any obligation set forth in the preceding sentence, or otherwise misappropriates or makes unauthorized use of FLIR’s Confidential Information, any intellectual property resulting from such activities or otherwise arising out of, or in connection with such activities, and FLIR shall be the sole and exclusive owner of that intellectual property. Buyer will execute an assignment of invention(s) in the form approved by FLIR, for any intellectual property arising from a breach of this Section 10. The aforementioned provisions shall in no way be considered to abridge, supplant or otherwise limit other legal or equitable remedies available to FLIR for such breaches, and FLIR may seek redress for such breaches to the fullest extent allowable by law. The obligations in this Section 10 shall survive termination of this Contract.

11. PATENT INDEMNITY. If the Goods sold hereunder are to be prepared or manufactured according to Buyer’s specifications, Buyer shall indemnify FLIR and hold it harmless from any claims or liability for patent or trademark infringement on account of the sale of such equipment. FLIR agrees at its option to procure a noninfringing substitute for the Goods or to modify the Goods for the account of Buyer (but not subsidiaries or customers of Buyer) and indemnify Buyer against any award of damages and costs for direct infringement made against Buyer by a court of last resort to the extent that the damages award is based on a final determination that the Goods as and when furnished by FLIR to Buyer directly infringed any U.S. patent, trademark or copyright. Indemnification of costs under this provision shall extend only to actual costs assessed. The indemnity obligations in this section do not apply to Goods made or modified to Buyer’s specifications, and are expressly conditioned upon: (a) Buyer providing FLIR with written notice promptly, and in any event no later than ten days from Buyer’s receipt of notice, of such claim; (b) FLIR shall have the option of having sole control of the defense against such claims and the negotiation for their settlement; (c) Buyer cooperating with FLIR in the defense and negotiations relating to the claims; and, (d) if FLIR determines that the Goods are or are likely to be the subject of direct infringement, except to the extent that the infringement is not the subject of a claim by Buyer, keep using the Goods, or obtain substitute goods, or modify the Goods to be noninfringing, or refund the price. The indemnity obligations stated in this section shall not apply if the infringement claims result from: (a) Buyer or Buyer’s customer altering the Goods; (b) use of the Goods in a manner neither intended nor contemplated at the time of the sale; or, (c) Buyer’s failure to use a modified or substitute good provided by FLIR pursuant to this indemnity agreement. Buyer shall indemnify FLIR for any losses, expenses, damages, or costs, including reasonable attorneys’ fees, incurred by FLIR in connection with such claim, suit, proceeding, or other legal action or claim. This indemnity shall in no way limit Buyer’s right to claim for any such infringement.

12. LIMITATION OF LIABILITY. FLIR shall in no event be liable for any consequential, incidental, indirect, special or punitive damages arising out of the Contract, or out of any breach of any of its obligations hereunder, or out of any defect in, or failure of, or malfunction of the Goods or Services, including but not limited to, claims based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other equipment, environmental damage, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase of replacement equipment, or claims of Buyer or customers of Buyer for service interruption whether or not such loss or damage is based on contract, tort (including negligence and strict liability) or otherwise. FLIR’s maximum liability under or in any way relating to this Contract shall not exceed the Purchase Order price for the Goods or Services upon which such liability is based. All such liability shall terminate one year from the date of delivery of the Goods, if not sooner terminated.

13. APPLICABLE LAW. The Contract shall be governed by the law of the State of Oregon, exclusive of its conflicts of law principles. Any disputes arising out of this Contract that cannot be informally resolved shall be adjudicated exclusively in Multnomah County, Oregon, in any court of competent jurisdiction. This Contract is expressly conditioned on the exclusion of the application of the United Nations Convention on the International Sale of Goods.

14. TERMINATION. Buyer shall have the right to cancel the Contract upon 30 days’ prior written notice to FLIR, and FLIR shall stop performance upon the receipt of such notice. If the order canceled is for a standard commercial product, Buyer shall pay FLIR 25% of the Purchase Price. If the order canceled is for a custom product, Buyer shall pay: (a) the agreed unit price for all equipment or components completed and delivered; (b) additional material and labor costs incurred; (c) engineering services for the canceled items, which shall not exceed the contract price for such items; and (d) such other costs and expenses, including cancellation charges under FLIR’s subcontracts, if any. Buyer’s obligations under Sections 4, 9, 10, 11 and 12 shall survive termination of this Contract.

15. EXPORT LAWS. The Goods are subject to U.S. Government export laws and regulations. Buyer shall not export, re-export, or transfer the Goods or Confidential Information received from FLIR without first obtaining the appropriate US Government approvals. FLIR will cooperate with Buyer to obtain any export licenses Buyer seeks, but obtaining such licensing shall be the exclusive responsibility of Buyer and FLIR makes no representation or warranty regarding the issuance of export licenses for the Goods.

16. SOFTWARE LICENSE. If Seller provides restricted software with the Goods, that restricted software is proprietary to Seller or Seller’s suppliers. Seller grants Buyer a nonexclusive, perpetual license to use the software only on and in conjunction with the Goods. Buyer agrees that title remains with Seller (and its suppliers, if any) and Buyer shall not disassemble, decode, or translate the software, or copy or modify the software except for archival or back-up purposes as necessary for use on and with the Goods. Buyer will maintain all proprietary marks on software provided by Seller. Buyer may transfer this license if transferring the Goods also and if the transferee agrees to comply with the restrictions of this license. Upon such transfer, Buyer’s license terminates and Buyer shall destroy all copies of the software and related documentation in Buyer’s possession.

17. ASSIGNMENT. Neither party shall assign its rights or delegate its duties under this sale agreement without the prior written consent of the other. Refusal to consent to assignment must be commercially reasonable, however.

18. TRADEMARKS. Buyer agrees that it will not use any name or trademark of FLIR Systems, Inc. without prior express written permission.

19. U.S. TAXES. The prices stated are exclusive of any federal, state, municipal, or other government tax that may be imposed upon the production, storage, sale, transportation or use of the Goods and Services described herein. The U.S. Government is not taxable in any state. Buyer shall present FLIR with a valid and correct tax exemption or direct payment certificate applicable to Goods and Services purchased and the ship-to destination at the time of order placement, or at the time of order placement, or at the time of shipping. The tax exempt certificate and the company bill-to must correspond. If a valid and correct tax exempt or direct payment certificate is not provided at the time of order placement, Buyer shall be responsible for payment of sales and/or use tax charged on invoice when shipping to the following states: AL, AZ, CA, CO, FL, GA, IA, IL, IN, KY, LA, MA, MD, MI, MN, MO, NC, NJ, NY, OH, PA, SC, SD, TN, TX, UT, VA, WA, and WI. Buyer will be responsible to remit applicable sales and/or use tax directly to the state not listed herein, as applicable.

20. U.S. GOVERNMENT ACQUISITION REGULATIONS. When Buyer is a prime contractor or a subcontractor at a higher tier than FLIR for a U.S. Government prime contract, applicable Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement clauses (collectively, FAR Clauses) may be incorporated into this Contract only if there are other FAR clauses that make the subject incorporation in this Contract mandatory. FLIR expressly rejects the incorporation of any FAR Clauses that do not meet the foregoing condition. In all incorporated FAR Clauses, the terms “Government” and “Contractor” shall be revised to identify properly the contracting parties under this Contract and effect the proper intent of the clause. Except with respect to termination for FLIR’s default, Buyer shall exercise an incorporated FAR Clause against FLIR only if, and to the extent that, the subject FAR Clause is exercised against the Buyer by Buyer’s customer.