1. GENERAL
All orders for Lawo, Corp. ("LAWO") products or services, including, without limitation, software (each a “Product”) supplied by LAWO to the Customer (as defined in Section 2) shall be subject to these terms and conditions of sale. No modifications hereto, whether by amendment, purchase order or otherwise, will be binding unless agreed to in writing by LAWO and LAWO hereby expressly rejects all additional, different, or contrary terms and conditions.

If a Product includes the licensure of any software provided by the Lawo Group, together with applicable technical documentation, containing specifications, instructions, and/or other information accompanying such software or made available by LAWO from time to time (collectively “Software”), Customer acknowledges that the Software may also be subject to additional terms and conditions set forth in executable or electronic license agreements. Subject to the terms of such license agreements, all rights not expressly granted herein are reserved, and all other uses of the Software are subject to these terms and conditions of sale as well as the payment of any applicable Software license fees, including fees for specific Software functionalities, as identified by LAWO in writing.

These Terms and Conditions are of a continuing nature and shall apply equally to all future orders, services and shipments, whether explicitly stated or not, until such time as LAWO agrees to new Terms and Conditions in writing.

2. CUSTOMER
The term “Customer,” as used herein, means the first distributor, resale dealer, original equipment manufacturer or first-end user customer that purchases the LAWO Products and not any subsequent purchaser or user.

3. WARRANTY
LAWO hardware products (each, a “Hardware Product”) (excluding Software) shall be free from defects in material and workmanship and comply with LAWO’s published product specifications for a maximum of twelve (12) months from the date of shipment to the Customer.

In the event that a Hardware Product warrants replacement as determined by LAWO service personnel an RMA will be issued to the Customer. The Customer is responsible to return the defective Hardware Product at Customer’s cost to LAWO advised return address. The Hardware Product needs to include all relevant paperwork as advised by LAWO including the RMA number. Note that no Hardware will be accepted by LAWO without an authorized RMA number.

LAWO’s sole obligation shall be, at its option, to repair or replace the Hardware Product. The repaired or replacement Hardware Product will be shipped CPT Customer’s destination facilities, freight prepaid by LAWO.

LAWO shall pay standard lowest cost freight charges from Customer and return to Customer. Any non-standard or additional freight charges shall be for Customer’s account.

Return of any defective Hardware Product for warranty service requires return of the entire appliance with the production batch number clearly visible, together with evidence of billing and shipping numbers.

No employee, agent or representative of LAWO has the authority to waive, alter, vary, or add to the terms hereof without the prior written approval of an officer of LAWO. It is expressly agreed that (a) this section constitutes the final expression of the parties’ understanding with respect to the warranty and (b) this section is a complete and exclusive statement of the terms of the warranty.

LAWO shall have no obligation under the applicable warranty set forth above in the event that:

a) The Customer fails, within the applicable warranty period to notify LAWO in writing and provide LAWO with evidence satisfactory to LAWO of the alleged defect within five (5) days after it becomes known to the Customer;

b) After inspection of a Hardware Product, LAWO determines, in its sole discretion, that it is not defective in material or workmanship;

c) Repair or replacement of a Hardware Product or any part thereof is required through routine usage or normal wear and tear;

d) The Hardware Product is altered, or the serial number has been removed;

e) A Hardware Product is not maintained or used in accordance with LAWO’s applicable operating and/or maintenance manuals, whether by the Customer or any third party;

f) A Hardware Product has been subject to misuse, misapplication, negligence, neglect (including, but not limited to, improper maintenance or storage), accident, catastrophe, improper installation, modification, adjustment, repair or lubrication, whether by the Customer or any third party, without the prior written consent of LAWO. Misuse shall include, but not be limited to, damage to a Product due to chemical action, wear caused by the presence of abrasive materials, excess heat or cold, improper, or unusual electrochemical, electromechanical, or electronic influences.

g) The system of connected parts into which the Hardware Product becomes incorporated is not compatible with the Hardware Product, or it is not free from critical variations within the specified operating range, no matter how induced;
h) The transmitted electrical voltage is not within the published limits for the unit sold; or

i) Items manufactured by other parties but installed in or affixed to LAWO’s Products are not warranted by LAWO and bear only those warranties, express or implied, which are given by the manufacturer of such items, if any.

THE WARRANTY SET FORTH ABOVE IS INTENDED SOLELY FOR THE BENEFIT OF THE CUSTOMER AND DOES NOT APPLY TO ANY THIRD PARTY. ALL CLAIMS MUST BE MADE BY THE CUSTOMER AND MAY NOT BE MADE BY ANY THIRD PARTY. THIS WARRANTY MAY NOT BE TRANSFERRED OR ASSIGNED, IN WHOLE OR IN PART, BY THE CUSTOMER FOR ANY REASON WHATSOEVER. ANY SUCH ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID.

EXCEPT AS PROVIDED IN A LICENSE AGREEMENT BETWEEN LAWO AND THE CUSTOMER PERTAINING TO LAWO SOFTWARE, THIS WARRANTY SUPERSEDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BETWEEN LAWO AND CUSTOMER THAT ARE NOT PART OF THESE TERMS AND CONDITIONS, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY LAWO, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF USE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF LAWO FOR DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE USE, REPAIR OR PERFORMANCE OF THE PRODUCTS.

LAWO SHALL NOT BE RESPONSIBLE FOR, NOR HAVE ANY FINANCIAL RESPONSIBILITY FOR, UNINSTALLING, INSTALLING, REPLACING OR REPAIRING ANY OTHER PRODUCTS.

4. INDEMNIFICATION
Customer hereby agrees to indemnify, defend and hold harmless LAWO, its parent, subsidiaries, affiliates and divisions, and its and their respective officers, directors, shareholders, agents and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements and court costs) to the extent arising from, relating to, or in connection with (i) the negligence or wilful misconduct of Customer, its agents, employees, representatives or contractors; (ii) LAWO’s compliance with designs, specifications or instructions supplied to LAWO by Customer; (iii) use of a Product in an application or environment, or for a procedure for which it was not designed; (iv) use of a Product other than as labelled and/or other than in a manner consistent with the Product’s instructions for use or specifications; or (v) modifications of a Product by anyone other than LAWO without LAWO’s prior written approval.

5. MODIFICATIONS AND UPDATES
LAWO reserves the right, without notice to the Customer, to (a) change the specifications of any Product, (b) improve a Product in any manner that LAWO deems necessary or appropriate and (c) discontinue the manufacture of any Product.

Customer may order new Software versions, releases, or maintenance updates (together, “Updates”), if available, separately through LAWO service level agreements. Additional licenses or fees may apply for these Updates or for the use of the Software in an upgraded environment. Updates are subject to the license terms in effect at the time that LAWO makes them available to Customer.

6. QUOTATIONS
Upon request, LAWO will issue quotations for LAWO Products, which shall be valid for thirty (30) days. A quotation will contain (a) an identification of the Products or services offered, (b) prices for such Products, (c) quantities, (d) delivery terms and dates and (e) an individual quotation number.

7. PURCHASE ORDERS AND ACCEPTANCE.

a) Purchase orders must be submitted to LAWO in writing, whether by mail, telefax, email or online, and must reference the individual quotation number. All purchase orders received from the Customer must be subject only to these terms and conditions and shall be deemed accepted by LAWO unless rejected within two (2) weeks of receipt by LAWO. Purchase orders that alter the terms of the corresponding quotations shall be deemed requests for new quotations.

b) ACCEPTANCE IS CONDITIONED UPON CUSTOMER’S ACCEPTANCE OF THE TERMS AND CONDITIONS AND LAWO’S WARRANTY TERMS SET FORTH IN SECTION 3 HEREIN.

8. MODIFICATION OF ORDERS
Subject to Section 9 below, no accepted purchase order shall be modified or canceled except upon the written agreement of LAWO and the Customer. Mutually agreed cancellations shall be subject to reasonable charges based upon expenses already incurred by LAWO and commitments made by LAWO. Mutually agreed change orders shall be subject to all provisions of these Terms and Conditions of Sale.

9. PRICE INCREASES
Any quotations made by LAWO are based on material and labor costs at the time the quotation was submitted and LAWO may increase its prices for the Products (subject to change without notice). Increased prices for Products shall not apply to purchase orders accepted prior to the effective date of the price increase.

10. PRICING AND DELIVERY TERMS
Unless otherwise agreed upon in a LAWO quotation and corresponding purchase order, all Products are delivered Ex Works (Incoterms 2010) the LAWO manufacturing facility in Rastatt, Germany, or such other facility as LAWO may designate. Orders are then shipped per LAWO’s choosing at lowest cost standard freight rates. LAWO shall have no further responsibility for the Products and title and all risk of damage, loss or delay shall pass to the Customer Ex Works.
provided that no title transfer shall ever occur for any licensed Software associated with any Product sale. Differing delivery terms (Incoterms 2010) are subject to additional charges to be agreed upon in a LAWO quotation and corresponding purchase order. In the event Customer issues special shipping instructions, Customer shall be responsible for such and any additional expenses caused thereby and may be asked to prepay such or accept collect shipment.

If a quotation also includes assembly and/or commissioning and training and unless otherwise agreed, the Customer shall pay the remuneration agreed upon in the quotation and purchase order or a separate written agreement and any incidental costs required, including, without limitation, for travelling and transport as well as allowances.

11. ASSEMBLY AND INSTALLATION
Unless otherwise agreed in written form, assembly, commissioning and training shall be subject to the following provisions:

a) The Customer shall provide at its own expense and in due time:
   i. all electrical and construction work and other ancillary work outside LAWO’s scope, including all necessary skilled and unskilled labor, construction materials and tools, not directly related to or a part of the Hardware Product(s) supplied by LAWO under this Agreement.
   ii. the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants.

b) Before any work starts, the Customer shall make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

c) Prior to installation, the materials and equipment necessary for the work to start must be available on the site of installation and any preparatory work must have advanced to such a degree that installation can be started as agreed and carried out without interruption. Access roads and the site of installation must be level and clear.

d) If assembly, erection or commissioning is delayed due to circumstances for which LAWO is not responsible, the Customer shall bear the reasonable costs incurred for idle times and any additional travelling expenditure of LAWO or its personnel.

12. PAYMENT TERMS
The purchase price shall be due NET 30 DAYS upon receipt of an invoice. If any invoice is not paid in full within such thirty (30) day period, then finance charges shall be assessed at the rate of one percent (1%) per month (twelve percent (12%) per year). If such rate is deemed to be usurious at anytime, it shall be reduced to the maximum rate permitted by applicable law. LAWO may cancel the purchase order and stop or withhold shipment of Products if the Customer does not fulfill its payment obligations. If LAWO has doubts about payment for any reason, LAWO may require full or partial payment in advance and as a condition to the continuation of its delivery of Products.

Customer shall not deduct, offset or otherwise withhold full and prompt payment by reason of any credits or claims for credits or other claims without the express written consent of LAWO.

Customer shall be responsible for any sales, use, value-added or other excise tax on the products.

13. SECURITY INTEREST
Unless and until the Products are paid for in full, LAWO reserves a purchase money security interest in them to secure the unpaid balance of the purchase price. The Customer hereby grants to LAWO a power of attorney, coupled with an interest, to execute and file on behalf of the Customer all necessary financing statements and other documents required or appropriate to protect the security interest granted herein.

14. ACCEPTANCE OF PRODUCTS
The Customer will conduct any incoming inspection tests as soon as possible upon arrival of the Products, but in no event later than five (5) days after the date of receipt. Any Products not rejected by written notice to LAWO within such period shall be deemed accepted by the Customer and LAWO shall not be liable for any additional costs, expenses or damages incurred by the Customer, directly or indirectly, as a result of any shortage, damage or discrepancy in a shipment. The Customer may not reject any products for immaterial defects.

15. LIMITATION OF REMEDIES.
a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL LAWO, OR ITS AFFILIATES, MANUFACTURERS, SUPPLIERS OR LICENSORS (AS THIRD PARTY BENEFICIARIES) BE LIABLE FOR DIRECT DAMAGES OR OTHER LOSSES OR LIABILITIES DIRECTLY RELATING TO THE PRODUCTS, SOFTWARE OR SERVICES OR OTHERWISE ARISING OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE SAME INSTALLATION OR OTHER USE OF PRODUCTS OR THE PROVISION OF SERVICES, IF AND TO THE EXTENT SUCH DIRECT DAMAGES OR LOSSES EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT(S) OR RELATED SERVICES THAT DIRECTLY GAVE RISE TO THE DAMAGES OR OTHER LOSSES OR LIABILITIES CLAIMED (PROVIDED THAT FOR ANY SERVICES, THE AMOUNT SHALL BE LIMITED TO THE AMOUNT PAID FOR SAID SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO BRINGING THE CLAIM), REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, EXPRESS OR IMPLIED WARRANTY, TORT, PRODUCT OR OTHER STRICT LIABILITY, TRADE PRACTICES, OR OTHERWISE, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.
b) LAWO SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE CUSTOMER WITH PRODUCTS.

c) IN NO EVENT SHALL LAWO’S LIABILITY INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF LAWO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

16. RETENTION OF INDUSTRIAL PROPERTY RIGHTS
On behalf of itself and its manufactures, LAWO reserves all rights of trademark, ownership, copyright and other industrial or intellectual property rights to any trade or service names, software, firmware, specifications, technical data, drawings, illustrations, catalogues, models, documents and sales literature. Customer may not make use of any such or in any manner reproduce such without the express written consent of LAWO or the manufacturer.

17. REGULATORY LAWS AND STANDARDS
LAWO makes no representation that its Products conform to state or local laws, ordinances, regulations, codes or standards except as may be otherwise agreed to in writing by LAWO.

It is the policy of LAWO to comply fully with the export laws and regulations of both the United States and Canadian government and/or applicable laws and regulations of other countries. Unless otherwise specifically agreed between the parties in writing, LAWO’s Products are intended for use solely within the USA and Canada.

Customer represents and warrants that it is purchasing Products exclusively for civilian, non-military purposes to be used in the United States or Canada in compliance with the laws of both countries and that there will be no re-export or diversion contrary to such laws.

LAWO and Customer are Independent Contractors and not principal and agent. Nothing construed or contained in these Terms and Conditions shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Without limiting the generality of the foregoing, Customer is not authorized to make, and shall not make, any representations on behalf of, or which are binding upon, LAWO and shall take no actions on behalf of, or which are binding upon, or creating any liability under export laws and regulations for LAWO. The status of LAWO and its personnel and any subcontractors is and will be that of independent contractors, and no such personnel or subcontractors will, at any time or for any purpose, be deemed employees or agents of Customer.

18. Product Specifications
LAWO’s Products are made only in the sizes and to the specifications set forth in its catalogs and other literature. If any alteration is requested, such altered Product will be treated as a made-to-order item. LAWO assumes no responsibility for typographical errors which may appear in its catalogs or literature, and cannot accept alteration charges caused by such errors. Freight allowances will be determined at the time of shipment and shall be based on actual shipping weight.

19. SYSTEM DESIGN
Responsibility for system design to ensure proper use and application of LAWO’s Products within their published specifications and ratings rests solely with the Customer.

20. PRODUCT RETURNS
Returns of properly delivered and non-defective Hardware Products is only permissible with the prior written consent of LAWO at Customer’s expense and LAWO shall have the right to charge a restocking fee to cover administrative, inspection and repackaging costs. No Products shall be returned unless undamaged, unused, and in their original unopened packaging. Returns of Hardware Products are only entitled to a credit note for other purchases and not for repayment and all freight charges shall be deducted. All costs for modification of specially made Products shall also be deducted.

21. CHOICE OF LAW AND JURISDICTION.

a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties irrevocably submit to the exclusive jurisdiction of the courts of Ontario and the Federal Court of Canada. All disputes in connection with this Contract shall be commenced and heard in a court of competent jurisdiction in Toronto, Ontario.

b) The parties hereby acknowledge that they have required that these Terms and Conditions and all amendments and notices of any kind whatsoever, now or hereafter agreed to by the parties, or required pursuant hereto, be drawn up in the English language only. Les parties reconnaissent avoir demandé que le présent contrat ainsi que tout amendement et avis, de quelque nature que ce soit, qui sont ou seront conventionnels entre les parties, ou d’autres ententes ou avis qui sont requis ou en vertu des dispositions du présent contrat, soient rédigés en langue anglaise seulement.

22. FORCE MAJEURE.
Any delay or failure of LAWO to perform its obligations hereunder shall be excused and the time for performance extended if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of LAWO and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, civil unrest, terrorism, sabotage, unavailability of raw materials, energy or transport and strikes (“Force Majeure”). During the period of such delay, or failure to perform by LAWO, LAWO shall provide Customer with prompt written notice of such delay including a description of the cause of the event or circumstance, an estimate of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance. Should the effect of Force Majeure continue for more than sixty (60) consecutive days, both parties shall settle the further execution of the Contract through friendly negotiation.
23. NOTICES
Notices permitted or required to be given hereunder shall be deemed sufficient and effective upon actual receipt, if given by personal delivery, fax, email, internationally recognized courier or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as they may designate by like notice from time to time.

24. FINAL AGREEMENT
The quotation, purchase order, these terms and conditions and all documents specifically annexed thereto or referred to therein (including, without limitation, license agreements with regard to Software) are a full and final statement of the terms of the agreement and all prior or contemporaneous discussions or writings shall not be deemed part of this agreement. These terms and conditions shall survive the termination of the agreement or purchase order.

25. SEVERABILITY
If any provision or portion of these terms and conditions of sale are invalid or unenforceable, such provision shall be deemed not to be a part of these terms and conditions and shall not affect the validity or enforceability of the remaining provisions.