



## GENERAL TERMS Terms for All Transactions

These General Terms apply to any quote, order, order acknowledgment, and invoice, and any sale, license or delivery of all products, software, or services by Viavi Solutions Inc. or any of its subsidiaries or affiliates ("Viavi"). Viavi does not accept, expressly or impliedly, and Viavi hereby rejects and deems deleted, any additional or different terms or conditions that any potential or actual customer ("Customer") presents, including, but not limited to, any terms or conditions contained or referenced in any order, acceptance, acknowledgment, or other document, or established by trade usage or prior course of dealing, unless Viavi expressly and unambiguously agrees to such terms and conditions in a duly signed writing. By ordering, accepting delivery, keeping, or using products or otherwise proceeding with any transaction after receipt of the Agreement (as defined below) or after otherwise being notified that such transactions are subject to the Agreement, Customer agrees to the terms of the Agreement. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms of the Agreement.

### 1. DEFINITIONS.

**"Agreement"** means a contract between Viavi and the Customer that is formed by reference to these General Terms and, where applicable, one or more sets of Viavi's offering-specific terms (e.g., Software License Terms or Fixed Fee Services Terms) that are attached hereto or available at [www.viavisolutions.com/terms](http://www.viavisolutions.com/terms) or from Viavi on request.

**"Confidential Information"** means any technical or other information related to Viavi's Goods and Services (including, but not limited to, any documentation, services offerings, training materials, and written, visual, and oral instructions) and any information that is marked or otherwise expressly identified as confidential in writing or that should have been reasonably understood as such due to its nature, regardless of whether in tangible, electronic, verbal, graphic, visual or other form, that Viavi discloses to Customer. Confidential Information does not include material or information that (i) is generally known by third parties as a result of no act or omission of Customer; (ii) subsequent to disclosure hereunder was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (iii) was already known by Customer prior to receiving it from Viavi and was not received from a third party in breach of that third party's obligations of confidentiality; or (iv) was independently developed by Customer without use of Confidential Information of Viavi.

**"Delivery Date"** means the earlier of the date on which (i) Viavi puts a Good into the possession of a carrier for shipment, (ii) Customer takes possession of a Good; or (iii) Viavi makes the Good available to Customer.

**"Documentation"** means Viavi's information manuals that (i) contain operating instructions and performance specifications for the Products, Software, and/or Services; (ii) Viavi delivers to Customer with the Products, Software, and/or Services; and (iii) Viavi generally makes available to all users of its Products, Software, and/or Services.

**"Firmware"** means firmware and software that is (i) installed on tangible products, including back-up copies of such software that are delivered with such tangible products, and (ii) not referred to by Viavi with individual product numbers and line item prices.

**"Goods"** means Products, Software and Documentation.

**"Intellectual Property"** means any computer program or routine (in object code, source code, or embedded format, regardless of the medium on which it resides), algorithms, know-how, firmware, hardware and/or software configurations, inventions, documentation, translations, text and other works of authorship, data, databases, information, mask works, designs, utility models, symbols, logos, marks, names, procedures, processes, methods, improvements and any other intangibles as well as the prototypes, samples, copies, and other materialized forms of the foregoing intangibles.

**"Product"** means any tangible products or parts thereof that Viavi agrees to deliver or delivers to Customer including any Firmware.

**"Proprietary Rights"** means any and all rights, title, ownership and interests in and to copyrights, mask work rights, industrial designs, trademarks, service marks, trade names, trade secrets, patents, and any other rights to Intellectual Property, recognized in any jurisdiction or country of the world, whether or not registered or perfected.

**"Services"** means any services provided by Viavi, including without limitation, any Installation Services, Training Services, Software Maintenance Services, Time & Materials Services, and/or Fixed Fee Services, as applicable (such terms as defined in the applicable offering-specific terms).

**"Software"** means any computer software in object code, source code, or other format that Viavi agrees to deliver or make available to Customer, excluding Firmware. For greater clarity, no licenses under these General Terms shall extend

to any source code.

**"Work Product"** means any tangible or intangible results or deliverables that Viavi agrees to create or deliver, or intentionally delivers to Customer, as a result of performing services, including, but not limited to, configurations, computer programs or other information, or customized hardware, and any Intellectual Property developed in connection therewith and Proprietary Rights related thereto.

2. **ORDERING.** Viavi's quotations (unless they expressly specify otherwise) and Customer's orders are irrevocable for thirty (30) days from their respective date. Customer's orders are subject to acceptance at Viavi's sole discretion. No form of acceptance, except Viavi's written acknowledgment sent to Customer or Viavi's commencement of performance, shall constitute valid acceptance of Customer's orders, with any such acceptance being expressly conditioned on assent to the terms hereof and the exclusion of all other terms. Viavi may change its prices at any time without prior notice to Customer, but such change shall not affect any quotation that has been outstanding for less than thirty (30) days or any order that Viavi has expressly accepted in writing or through performance (whereby partial performance constitutes only partial acceptance to the extent performed). Once Viavi has accepted an order, Customer may not cancel, terminate, reschedule, suspend performance of, or issue a hold on, such order, in whole or in part, without the prior written consent of Viavi, which consent, if given, shall be upon terms that will compensate Viavi for any loss or damage therefrom, including but not limited to any work in process or services performed, the price of Goods and Services shipped to, manufactured for, or held separately for, Customer, and loss of profits, incurred costs, and a reasonable allocation of general and administrative expenses. In addition, if a return is agreed, Viavi reserves the right to charge Customer a restocking fee as follows: for standard Goods, 20% of the purchase price of the returned Goods with a minimum charge of \$50. Refunds, if any, will be issued as credit notes.

3. **DELIVERY.** Viavi selects the carrier, unless Customer provides written instructions. The carrier shall not be considered Viavi's agent. Viavi shall deliver all Goods and Services FCA Viavi's facility (Incoterms 2010), as designated by Viavi. Customer takes title and bears shipping costs and risk of loss from the FCA point of shipment. Viavi does not transfer ownership or title to any Software, Firmware, Documentation, or copies thereof; Viavi only grants limited, non-exclusive licenses, as provided herein. Partial and installment shipments are authorized. Alterations to any Goods and Services which Viavi deems necessary to comply with changed safety standards or governmental regulations, to make a Good or Service non-infringing, or to otherwise improve a Good or Service, may be made at any time by Viavi without prior notice to, or consent of, Customer and such altered Goods and Services shall be deemed fully conforming. Immediately upon receipt, Customer shall visually inspect the shipment and notify Viavi in writing of any deficiencies. Customer shall be deemed to have waived its rights to claim incorrect or incomplete delivery or packaging, unless Viavi receives Customer's detailed written notice within ten (10) days following delivery of the Goods and Services by Viavi. Performance and shipping dates specified or communicated by Viavi to Customer are approximate dates only and (i) the failure to perform or ship on such dates shall not be considered a breach by Viavi, and/or (ii) Viavi is permitted to deliver, and Customer will accept, shipments, in whole or in part, in advance of any dates communicated by Viavi and/or requested by Customer.

4. **NO INSTALLATION.** Viavi is not obligated to customize or install any Goods and Services, unless Viavi expressly agrees otherwise in a signed writing, in which case (i) Viavi's Installation Services Terms shall apply additionally, and (ii) Viavi's obligations with respect to such services shall be separate and independent of Viavi's obligations with respect to the delivery of Goods and other Services. If Customer agrees to rent hardware for use with AriesoGEO software products, it shall be Customer's responsibility to determine whether the specification for the hardware ("Specification") will meet its requirements. The hardware will be deemed accepted upon installation of the AriesoGEO software. If Customer delays

installation the applicable rental charges may be invoiced on the day first agreed for installation. Once accepted, in consideration for the payment of applicable charges, the hardware shall be made available for use by the Customer together with agreed maintenance activities and support services, if any, in accordance with the then prevailing support services standards applicable to the hardware as the same may be amended from time to time. During the rental period, Customer shall keep the hardware free from harm in a safe and secure environment and shall not modify or tamper with it without express written permission. Throughout the hardware rental period the Customer shall keep in force a suitable policy of insurance for an amount equal to the replacement cost of the hardware on an as new basis and shall produce a certificate thereof on demand. Upon termination of the hardware rental for any reason, the Customer shall promptly return all of the hardware in good condition (subject to fair wear and tear).

**5. PAYMENT.** Subject to credit approval by Viavi, which Viavi may modify, revoke or subject to conditions (e.g., approved letter of credit) at any time, Customer shall pay Viavi submitted invoices in full within thirty (30) days of the invoice date, without any deductions, withholdings, or off-set. Unless Viavi expressly states otherwise, all fees and prices quoted or invoiced exclude sales taxes, service taxes, withholding taxes, customs duties, and other taxes and charges, insurance, and costs related to transportation and special packaging requested by Customer, if any, with any such charges, taxes and/or costs being paid or reimbursed by Customer. If any withholding taxes apply, Customer shall gross up the invoiced amount to ensure that, after such withholding, Viavi receives the full amount invoiced. If Viavi does not receive all amounts when due (i) any due and unpaid portion of the fees shall bear interest in the amount of one and one half percent (1.5%) per month (annual rate 19.56%) or the maximum rate allowed by law, whichever is less, (ii) Viavi may immediately suspend deliveries, licenses and/or performance of any Goods and/or Services, and (iii) Viavi may require payment in advance for any subsequent orders or deliveries and/or further performance. At Viavi's request, Customer shall provide an irrevocable letter of credit from a financial institution and with terms reasonably acceptable to Viavi. All amounts are due in U.S. currency, unless Viavi specifies otherwise in writing, e.g., a quotation or invoice. All sales are final.

## **6. INTELLECTUAL PROPERTY CLAIMS.**

**6.1 Claims.** Viavi will defend or settle any third party claim against Customer that Goods and Services (excluding Build to Print Products as defined in Section 10.3) as delivered by Viavi infringe a third party's copyright, trade secret right or U.S. patent provided Customer promptly notifies Viavi in writing, and cooperates with and provides control of the defense or settlement to Viavi, to the extent legally permissible.

**6.2 Remedies.** In the event of an infringement claim under Section 6.1 (Claims), Viavi will pay (i) infringement claim defense costs, and (ii) settlement amounts and final court-awarded damages, provided in all cases that such costs, amounts, and/or damages do not exceed the amount that Customer paid to Viavi for the Goods and/or Services at issue. If such a claim appears likely, Viavi may, at its option, modify the Good or Service, procure any necessary license, or replace it. If Viavi determines that none of these alternatives is reasonably available, Viavi will, subject to Customer's return of the Goods or Services upon request by Viavi, provide a prorated refund of the fees that Customer paid for such Goods or Services, depreciated on a 36 month (Software) or 60 month (Product) linear basis.

**6.3 Exclusions.** Viavi has no obligation for any claim of infringement arising from: (i) Viavi's compliance with, or use of, Customer's designs, specifications, instructions or technical information; (ii) Goods and Services modifications by Customer or a third party; (iii) Goods and Services not used as expressly provided within the Documentation, Viavi's specifications or related application notes; or (iv) use of the Goods and Services with products not supplied by Viavi. This Section 6 states Viavi's entire liability, and Customer's sole remedy, for infringement claims.

## **7. LIMITATION OF LIABILITY.**

**7.1 Limitations.** IN NO EVENT SHALL VIAVI HAVE ANY LIABILITY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE, OR DATA, INSTALLATION OR REMOVAL COSTS, OR COST OF COVER. THE LIABILITY OF VIAVI FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH ANY GOODS OR SERVICES SHALL NOT EXCEED A TOTAL AMOUNT EQUAL TO THE PURCHASE PRICE PAID OR PAYABLE BY CUSTOMER FOR THE GOODS OR SERVICES PRINCIPALLY RESPONSIBLE FOR SUCH DAMAGES WITHIN THE LAST 12 MONTHS PRECEDING THE CLAIM UNDER THIS AGREEMENT.

**7.2 Scope.** THE LIMITATIONS OF LIABILITY IN SECTION 7.1 (LIMITATIONS) SHALL APPLY TO ANY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF VIAVI HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES AND REGARDLESS OF WHETHER THE LIMITED REMEDIES AVAILABLE UNDER THESE GENERAL TERMS OR ANY OFFERING-SPECIFIC TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

**8. CONFIDENTIAL INFORMATION.** Customer will protect the secrecy of Confidential Information with due care. Customer will not (i) disclose Confidential Information to anyone, except to persons in its own organization who have a need to know in order to fulfill Customer's obligations or exercise Customer's express rights under the Agreement and who are bound by non-disclosure obligations requiring them to keep the Confidential Information secret; and (ii) use Confidential Information except as necessary for the performance of Customer's obligations or the exercise of Customer's express rights under the Agreement.

## **9. RIGHTS IN INTELLECTUAL PROPERTY AND TOOLING.**

**9.1 All Rights Reserved.** Except as expressly agreed otherwise in writing, Viavi and its licensors reserve all rights, title and interests, including Proprietary Rights, to (i) any Software, Firmware and/or Documentation, and (ii) all Intellectual Property in and/or related to the Goods and Services. Software, Firmware and Documentation are licensed, not sold. The use of a copyright notice on any Good or Service shall not be taken to indicate that it has been published. All right, title and interest in and to any Work Product, Intellectual Property and/or Proprietary Rights, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Viavi solely, jointly or on its behalf, in the course of, arising out of, or as a result of Services performed, and any related tooling, set-up, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Viavi.

**9.2 No Reverse Engineering.** To the extent legally permissible, Customer agrees not to reverse engineer, translate, create derivative works of, decompile, separate, and/or disassemble, any Goods or portions thereof nor allow or assist others to do so.

**9.3 Actions under Mandatory Law.** To the extent that Customer is expressly permitted by applicable mandatory law to take any actions that are prohibited under these General Terms or any other terms of the Agreement, included, but not limited to, reverse engineering, Customer agrees to refrain from exercising such rights unless and until Customer has given Viavi three (3) weeks' prior written notice of Customer's intent to exercise any such rights and Viavi has not offered reasonable alternatives to Customer's exercise of the mandatory rights within such three (3) week period.

**9.4 Marks and Labels.** Customer acknowledges the goodwill associated with Viavi's trademarks. Customer shall not obscure, remove or alter any trademarks, patent numbers, labels, serial numbers, product identification, copyright or other notices affixed to any Goods and Services, related documentation or packaging, without the express prior written consent of Viavi. Customer shall display Viavi's and its licensors' names and logos as well as the name of any Goods and Services on each copy of Software or Documentation made by Customer (provided that Customer shall not make any copies except as permitted by Viavi in a duly signed writing).

**9.5 Firmware License.** Subject to the terms and conditions of this Agreement, Viavi grants Customer a non-exclusive, limited and restricted license to use Firmware as part of the Product on, with, or for, which it is delivered or made available; Viavi does not permit Customer to make any copies or derivative works of Firmware and Customer may not transfer Firmware, except as part of the same Product on, with, or for, which it is delivered or made available. Firmware may include license terms provided by Viavi and/or its third party licensors which will apply to the use of the Firmware, and take precedence over these license terms.

**9.6 Documentation License.** Viavi grants Customer a non-sub-licensable, non-exclusive, non-transferable, limited license to use the Documentation that Viavi provides for Customer's internal business purposes solely in support of Customer's use of the Goods and Services. Customer is not authorized to copy or modify Documentation, except as expressly permitted by Viavi in a duly signed writing.

## **10. LIMITED PRODUCT WARRANTY AND DISCLAIMER.**

This Section 10 applies only if and to the extent Customer orders or Viavi delivers Products, but not, for example, if and to the extent Customer orders Software or Services.

**10.1 Limited Product Warranty.** Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), Viavi's sole and exclusive obligations to Customer for any Product made by Viavi and sold hereunder are solely as described in this Section 10.1 and Section 10.2 below, with such obligations being limited solely to any Product which has been returned to Viavi under the RMA procedure (as defined in Section 11) and which in the reasonable opinion of Viavi is determined to be defective in workmanship, material or not in compliance with the Viavi specification applicable to the Product and has

in fact failed under normal use on or before: (i) for any Product within Viavi's Optical Security and Performance Segment, ninety (90) days from the Delivery Date of the Product; (ii) for CleanBlast, Xgig and Observer Products one (1) year from the Delivery Date of the Product, (iii) for all other Viavi Products three (3) years from Delivery Date of the Product, and one (1) year from Delivery Date for associated Product accessories and batteries, unless otherwise stated in writing by Viavi in accordance with Section 12.3. All third party products (including Software or Firmware) provided by Viavi carry only the original manufacturer's warranty applicable to Customer. Viavi will only accept for repair, replacement or credit under warranty Products made by third parties if expressly authorized to do so by the relevant third party. Any Product repaired or replaced under warranty is only warranted for the period of time remaining in the original warranty for the Product. Customer shall have no warranty claims, unless Viavi receives from Customer, before the end of the warranty period and within thirty (30) days of the date on which Customer first came to know, or should have known, about the warranty claim, (A) a written notice describing the warranty breach in reasonable detail (a Warranty Claim"); and (B) information in sufficient detail to enable Viavi to reproduce and analyze the failure.

10.1.1 *Excluded Causes.* Customer has no warranty rights with respect to defects or non-conformities caused by (i) use of the Product with hardware or software that was not expressly specified in writing by Viavi as suited for use with the Product; (ii) Customer's failure to follow Viavi's operating instructions; (iii) failure to implement updates; (iv) changes to the Customer environment in which Product was installed; (v) acts or omissions of persons other than Viavi or its authorized representatives; (vi) installation or maintenance of Product by someone other than Viavi or persons certified by Viavi; (vii) being accidentally damaged, disassembled, modified, misused, repaired or reworked (by any party other than Viavi or its authorized agents), improperly stored or handled, used in conjunction with another product that is incompatible or of an inferior quality, or used in applications which exceed the Product's specifications or ratings, neglected, improperly installed or otherwise abused or is used in hazardous activities; or (viii) Force Majeure conditions as defined in Section 12.7 (Force Majeure).

10.1.2 *Excluded Product and Components.* Customer has no warranty rights with regard to any (i) consumable Product or parts thereof (e.g., parts with an expected useful life of less than ninety (90) days, such as certain batteries); (ii) Product that has been modified by someone other than Viavi, unless such modifications were directed or approved by Viavi in writing and made in conformance with all specifications and instructions provided in such writing; (iii) prototypes, experimental, alpha, beta, field trial or unqualified Product; (iv) any patches, updates, or revisions that Viavi makes, at its sole discretion, available on its website or otherwise (for the avoidance of doubt, Viavi is not obligated to make any patches, updates, or revisions available outside the scope of specific maintenance agreements); (v) build to print Product (other than provided in Section 10.3 – Build to Print) and any other Product that Viavi provides in accordance with Customer's request, specifications, or instructions, unless Viavi agrees in a duly signed writing that the provided Product shall be covered by the limited warranty specified in Section 10.1 (Limited Product Warranty); and (vi) Product not returned in accordance with Viavi's RMA procedure. Additionally, to be clear, warranty rights do not include mandatory technical support (e.g. end-to-end case management, subject matter expertise via web and telephone support, in-region local language and time support). Viavi technical support is provided under a service contract (which each customer must enter separately with Viavi) and therefore, is treated by Viavi as a category of service independent from warranty rights. To the extent that Viavi provides access to technical support without a separate, valid support contract, it shall be at Viavi's sole discretion and Viavi may discontinue such technical support at any time. In such cases, incidents will be logged and tracked on a reasonable effort basis; Viavi does not commit to resolving any incidents without a valid service contract. Committed service level response times are reserved for separately paid-for technical support service pursuant to contracts or standard support terms and conditions, as applicable, as defined therein.

10.1.3 *Refurbished Parts and Prior Testing.* Product may incorporate reconditioned or refurbished parts or subassemblies and may have been used in testing prior to sale.

10.2. **Exclusive Remedies.** If any Product materially fails to conform to the limited warranty set forth in Section 10.1 (Limited Warranty) and actually fails during the applicable warranty period and under normal use, Viavi shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with Section 10.1 (Limited Product Warranty); or (ii) issue a credit to Customer for the amounts paid for the Product in exchange for return of the non-conforming Product, in which case Customer's licenses to any Firmware shall be automatically revoked. Customer hereby transfers to Viavi title and ownership of any parts that Viavi replaces.

10.3 **Build to Print.** Any Product that Viavi makes or customizes in accordance with Customer's specifications ("Build to Print Product") is excluded from the limited warranty in Section 10.1 (Limited Product Warranty). With respect to Build to Print Product, Viavi warrants only that Viavi performs the manufacturing services in a professional and workmanlike manner and in accordance with standards reasonably applicable to such services. Viavi will re-perform any services which are not in compliance with this warranty if Customer notifies Viavi of non-compliance in writing, on or before thirty (30) days immediately following completion of the applicable services. THIS SERVICE WARRANTY IS THE ONLY WARRANTY THAT APPLIES TO THE PROVISION OF CONTRACT MANUFACTURING SERVICES OR BUILD TO PRINT PRODUCTS TO CUSTOMER.

10.4 **Disclaimer.** THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 10 WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST VIAVI WITH RESPECT TO ANY NON-CONFORMANCE OF GOODS AND/OR SERVICES. EXCEPT AS SPECIFIED IN SECTION 10.1 (LIMITED PRODUCT WARRANTY) AND 10.3 (BUILD TO PRINT), VIAVI MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCT. VIAVI DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

11. **RETURN PROCEDURE.** Customer must make all claims under the warranties, and no claim will be accepted from any third party. The warranties set forth herein are non-transferable. With respect to warranty claims under this Agreement, Viavi will accept Goods only if returned in compliance with Viavi's Return Material Authorization process ("RMA"). Customer shall obtain a RMA number from Viavi prior to returning any Goods and ship the Goods prepaid and insured to the local care center or FCA point, as instructed by Viavi. If Customer returns Goods without an itemized statement of claimed defects, Viavi will not evaluate the Goods and Services but will return them to the Customer at the Customer's expense. Any Good that is returned to Viavi but which is found to meet the applicable specifications for the Good and/or is not defective in workmanship and materials shall be subject to Viavi's standard examination charge in effect at the time, which shall be charged to, and paid for by, Customer.

## 12. MISCELLANEOUS

12.1 **Compliance.** Customer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Customer will indemnify and hold Viavi harmless for any violation or alleged violation by Customer of such laws, rules, policies or procedures. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Goods or any technical data (including processes and services) received from Viavi, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that (i) none of the products or technical data supplied by Viavi will be sold or otherwise transferred to, or made available for use by or for, any entity that is: (a) located in an "embargoed" country in accordance with any applicable government list(s) including without limitation, those of the United States, (b) a 'denied' or 'restricted' party on any applicable government list(s) including without limitation, those of the United States, and/or (c) engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology; (ii) no relevant agency or authority has suspended, revoked or denied Customer's export and/or import privileges; and/or (iii) Customer is not located in or under the control of a national or resident of, a jurisdiction where this transaction is prohibited.

12.2. **Choice of Law and Jurisdiction.** The Agreement and its validity, interpretation and performance, and any related dispute between the parties ("Disputes") shall be governed by the laws of the State of New York and the United States of America, as if performed wholly within the State of New York, and without giving effect to any principles of conflict of laws. The parties specifically disclaim the application of (i) the United Nations Convention on Contracts for the International Sale of Goods and/or its implementing and/or successor legislation and/or regulations; and/or (ii) principles of conflicts of law and that body of law applicable to choice of law. Viavi and Customer hereby irrevocably and unconditionally submit to the jurisdiction of the courts in the State of New York and all courts competent to hear appeal therefrom and such courts shall have exclusive jurisdiction over any Disputes. Customer waives its right to a jury trial. Notwithstanding the foregoing, either party may, at its sole discretion, seek injunctive relief in any court of competent jurisdiction (including, but not limited to, preliminary injunctive relief). The

prevailing party in any legal proceeding brought by one party against the other party in a Dispute shall be entitled to recover its legal expenses, including, but not limited to, the costs of any court or arbitration proceeding and reasonable attorneys' fees.

**12.3 Entire Agreement.** This Agreement contains the entire agreement between Viavi and Customer concerning the subject matter of this Agreement, and apart from any existing sales agreement covering the products, software or services hereunder or non-disclosure agreements, this Agreement supersedes any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. No provisions in any purchase orders, or in any other documentation employed by or on behalf of either party in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. Any notices and any modifications of, or amendments to, the Agreement shall be invalid, unless (i) notices are in writing and sent by fax or by registered or certified mail, postage prepaid, or via email; and (ii) modifications and amendments are in writing and signed by duly authorized officers of both parties. Representations made by sales or technical personnel of Viavi shall have no legal effect, unless confirmed by a senior executive of Viavi (senior vice president or above) in writing. Furthermore, notices to Viavi are invalid, unless and until received at the address specified in the preamble of these General Terms with a copy to Viavi Solutions Inc., Attn. Legal Department, 6001 America Center Drive, 6<sup>th</sup> Floor, San Jose, CA 95002 or at such other address(es) as may be specified by Viavi to Customer in writing as the appropriate address for notices.

**12.4 Dates and Timelines.** All references to days shall be to calendar days, except as expressly noted otherwise. All scheduled shipment dates, delivery dates, and other dates are non-binding estimates, unless a senior executive of Viavi (vice president and above) expressly agrees in a duly signed writing that a certain date shall be legally binding.

**12.5 No Waiver.** The failure or delay of either party to exercise or enforce any right or claim does not constitute a waiver of such right or claim and shall in no way affect that party's right to later enforce or exercise it, unless such party issues an express written waiver, signed by a duly authorized representative.

**12.6 Assignment and Delegation.** Customer may not assign any of its rights against Viavi, and any (purported) assignment, either voluntarily or by operation of law, is invalid. Any warranties extended by Viavi are nontransferable and for Customer's benefit only. Viavi may assign its rights and delegate its obligations.

**12.7 Force Majeure.** Any non-performance or late performance – except of payment obligations – of either party shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing or late-performing party whether or not similar to the foregoing. If by reason of any such force majeure event, Viavi's supplies of Goods and Services are limited, Viavi shall

have the right to prorate the available supply in such a manner as it, in its sole discretion, determines appropriate.

**12.8 Audit.** Upon reasonable notice, Viavi or its agent(s) may inspect Customer's facilities (including computers) and records to verify Customer's compliance with these General Terms and any Software license terms and payment for all Software licensed (including applicable support fees) to Customer. Customer will keep records regarding its use in sufficient detail to permit this verification. Customer shall fully cooperate with such audit, and grant all required assistance and dial-in and/or on-site access to all networks, records, materials and equipment. If, after an audit, it is determined that Customer had underpaid any amounts due, Viavi will invoice Customer for and Customer will pay the amount of the underpayment plus interest from the date payment was due. If the underpayment is more than five (5%) percent of the amount properly due, Customer will also reimburse Viavi for its audit expenses. Viavi's rights and remedies under this Section 12.8 shall be in addition to and not in lieu of any other rights or remedies that are available to Viavi at law or in equity.

**12.9 Severability.** If and to the extent that any of the terms of this Agreement, except payment obligations, become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deemed deleted from this Agreement, but only to the extent that such term is illegal, it being the intent and agreement of the parties that the Agreement shall be deemed amended by modifying such term to the extent necessary to make it legal while preserving its intent or, if that is not possible, by substituting therefore another term that is legal and achieves the same objective. All remaining terms of this Agreement shall remain in full force and effect.

**12.10 No Authority.** The parties to this Agreement are independent contractors. No relationship of principal to agent, master or servant, employer to employee or franchiser to franchisee is established hereby between the parties. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever. Viavi neither assumes nor authorizes any third party, person or entity to assume or accept any liability or obligation, or to make any commitment for Viavi with regard to the Goods and/or Services.

**12.11 Interpretation.** In this Agreement, unless a contrary intention appears: (i) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any agreement supplemental hereto; (ii) words importing a singular number only shall include the plural and vice versa; (iii) the term "including" means "including without limitation"; (iv) other grammatical forms of defined words or expressions have corresponding meanings; (v) a reference to a section, document or agreement, including this Agreement, includes a reference to that section, document or agreement as amended from time to time, as permitted hereunder; and (vi) the division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement.