

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS: “Smiths” shall mean Kaelus, Inc., formerly Summitek Instruments, Inc.

“Customer” shall mean the person(s) or company that purchases Product/Services from Smiths pursuant to this Order.

“Order” shall mean the agreement between Smiths and the Customer (individually “Party” and collectively “the Parties”) for the sale and purchase of the Product/Services, including the Terms and Conditions of Sale herein and any contemporaneous writing, signed by both Parties, and firmly attached hereto.

“Product” means all components, spare parts, goods, Product, or materials of any kind, which are supplied by Smiths under this Order.

“Services” means all services, including maintenance and installation services, provided under this Order.

2. OFFER AND GOVERNING PROVISIONS: Each quotation and Order acknowledgement issued by Smiths is an offer by Smiths to sell the goods and/or services described in it in accordance with these Terms and Conditions of Sale, is not an acceptance of any offer made by the Customer, and is expressly conditioned upon the Customer’s assent to these Terms and Conditions of Sale. Smiths objects to any additional or different terms contained in any purchase order or other communication previously or hereafter provided by Customer to Smiths. No such additional or different terms or conditions will be of any force or effect. The terms of the Order will be the entire agreement between Customer and Smiths on the subject of the transaction that it describes; and there are no conditions to that agreement that are not part of the Order.

3. PURCHASE PRICE: Prices cited herein are based on current costs and are subject to reasonable adjustment on or after the date of acceptance of any purchase order to meet a rise or fall in such costs, as computed on the date of delivery.

4. PAYMENT: (A) Payment in full of the purchase price shall be made in United States currency in accordance with the terms shown on the original quote or invoice. Remit to: Kaelus, Inc., 12503 E. Euclid Avenue, # 7, Centennial, CO 80111.

(B) Punctual payment as stipulated herein is of the essence for the Order. When any sum owed by Customer to Smiths under this Order is overdue, Smiths may, without notice to Customer, either:

(i) cease the supply of further Product/Services under this Order without liability for any loss (including loss of profit or other financial or economic loss) to Customer until such sum, together with such interest as may be due thereon, is paid; or

(ii) terminate the Order and any other agreements between Smiths and Customer, whether or not any sums are due for payment by Customer there under, without liability on the part of Smiths. Customer shall pay Smiths immediately all sums due and outstanding under all such agreements with respect to Product/Services, supplied or ordered in partial execution of the agreements, together with all overhead and other costs incurred by Smiths as a result of such termination.

(C) No defect in the Order of the Product/Services shall operate to interfere with the terms of payment. If payment is not made as provided above, Customer shall thereby be deemed to have waived the warranties provided in Section 11 hereunder. Smiths may demand different terms of payment from those specified on the face of this Order, whenever it reasonably appears that Customer’s financial condition requires such changes, and may demand assurance of the Customer’s ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and Smiths may, upon making such demand, stop production and/or suspend shipments hereunder.

(D) If Customer is in default of any payment obligation, Smiths is, without reminder and prejudice to any other rights, entitled to charge interest at a rate of 1.5 times the legal interest for any outstanding sum, beginning with any due date of payment.

5. RETURN OF GOODS: There will be a 20% restocking fee, in addition to any shipping costs incurred and our technician’s expense, if applicable, for all returned items.

6. LIENS AND TITLE: (A) Customer hereby grants to Smiths a security interest in any property owned by the Customer (including Customer’s beneficial rights to

property leased by Customer) in the possession of Smiths or any of Smiths’ affiliates, at any time, to secure all amounts owed by Customer to Smiths under this Order.

(B) In the case of repairs or overhauls performed pursuant to this Order, Customer agrees to grant Smiths a perfected security interest in all Products retained in possession of Smiths upon which any repair or overhaul services have been performed by Smiths. Customer further acknowledges and agrees that, in addition to the security interest and lien expressly granted by Customer to Smiths, Smiths shall have a lien on the Product retained in possession of Smiths to the extent otherwise provided by law. Customer acknowledges that the lien (whether granted by Customer or through the operation of law) for repairs or overhaul shall be for the full value of such work, and shall be superior to any lien or interest in favor of Customer, its parents, affiliates, or subsidiaries, or any other person who has knowledge of this Order. To the extent that Smiths maintains possession of Product under repair, Customer agrees that Smiths is a secured creditor of Customer and has all the rights of a secured creditor.

(C) With respect to Product sold pursuant to this Order, Customer agrees and acknowledges that Smiths shall retain a security interest in such Product, unless and until all payment for Product has been made and all other covenants and agreements of this Order have been performed in full. Accordingly, Customer agrees that it will not suffer or permit any lien or encumbrance to be established that effects the title to the Product sold by Smiths pursuant hereto until Smiths has been paid in full. Customer agrees that, in the event of Customer’s insolvency, or in the event that any petition is filed by or against Customer under Chapter 7 or Chapter 11 of the Bankruptcy Code, Smiths may, at its discretion, recover all Products sold pursuant to this Order and/or seek damages or costs under applicable laws.

7. DELIVERY: (A) Unless otherwise agreed to in writing, Smiths shall deliver the Product FOB destination; freight prepaid by Smiths and added to invoice, the place of shipment named herein within a reasonable time after receipt by Smiths of Customer’s written acceptance. Typically transit time will be 7-10 business days from date of pickup from the Smiths warehouse. Deliveries shall be made during normal business hours Monday through Friday. One attempt to deliver will be made. Should delivery need to be rescheduled, any additional costs incurred for redelivery and/or storage fees will be charged to the Customer. Smiths shall use reasonable efforts to make timely delivery but shall be excused from any delays arising out of causes beyond its reasonable control. Any specific delivery dates that may be stated are approximate. Smiths shall, under no circumstances, be liable for damages, incidental or consequential (hereinafter contemplated as including, but not limited to, damages for lost profits, lost sales and injury to person or property), for delays, or failure to give notice of delay, whether or not caused by or resulting from Smiths’ negligence. Customer agrees not to make such claim on Smiths.

(B) If proper tender of the Product is made and completion of delivery is prevented through no fault of Smiths, Smiths may specify a reasonable alternative place of delivery. Customer agrees that all costs of storage and transport incurred following an initial attempt at delivery are hereby allocated to and imposed upon Customer, and shall be added by Smiths to the sale price. Delivery may at any time be withheld by Smiths pending payment of any sum due from the Customer to Smiths under this Order or any other agreement. Smiths will return Product via the incoming method unless an alternative method has been indicated on the purchase order or a change authorized by the Customer representative. Please note that the above delivery statement does not apply for deliveries made outside the 48 contiguous States. See quotation for delivery terms and conditions.

8. DELIVERY REQUIREMENTS: The Customer is responsible for assuring access points for delivery of Product when necessary and is required. In an effort to assure a successful delivery, we kindly ask that our Customer clearly state delivery instructions on their purchase order.

9. DELIVERY INSPECTION REPORT: In an effort to help protect both Smiths and our Customers, we ask that before signing for receipt of your Products, you take a few minutes to conduct a thorough evaluation of the Products and complete the “Delivery Inspection Report” provided by the contracted delivery company.

10. STORAGE FEES: A storage fee will be applied monthly up to the maximum allowed by law on all repaired and overhauled units if delivery is not taken within (5) days of notification.

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11. WARRANTIES: (A) Smiths warrants that Products sold by Smiths, and that is manufactured by Smiths (1) conforms to Smiths specifications, and (2) is free from defects in materials and workmanship (under normal usage and provided that Smiths' operation and maintenance instructions are followed by competent personnel). Warranty periods vary by product. Normal wear and tear shall not be considered a defect.

(B) Smiths warrants that it shall use reasonable efforts to provide the Services ordered under the Order. Smiths does not represent or warrant that all Product problems will be corrected or if corrected, corrected to the full satisfaction of Customer. The express warranty set forth in the first sentence of this paragraph shall be the only warranty given by Smiths with respect to the Services provided.

(C) For Products that are not manufactured by Smiths, Smiths' only responsibility is to assign to its Customer any manufacturer's warranty that does not prohibit such assignment.

(D) Product and parts that are consumed in normal operation are not covered by this warranty.

(E) If the Customer or Operator, as the case may be, discovers a defect within the applicable warranty period, it must be reported to Smiths' service department at 1-303-768-8080 immediately upon discovery.

(F) Within a reasonable time after proper notification, Smiths shall, during its normal business hours, Monday through Friday, correct any defect covered by this warranty with either new or used replacement parts, without charge. The original duration of this Warranty shall remain applicable to those parts not repaired or replaced. Any part repaired or replaced is warranted to conform to Smiths' specifications and to be free from defects in materials or workmanship appearing within a period after repair or replacement equivalent to the warranty period originally applicable to the Product of which it is a part, subject to the other terms of this Warranty. The above remedies are the exclusive remedies of Customer and Operator, and the sole responsibility of Smiths, for breach of this Warranty.

(G) Smiths' warranty ceases to be effective if Customer fails to operate and use the Product sold hereunder in a safe and reasonable manner in accordance with Smiths' written instructions.

(H) Customer shall not be entitled to any remedy under this Warranty with respect to:

(i) Product/Services that has been subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by Smiths;

(ii) Product/Services subjected to experimental running or any type of operation or use other than that for which the Product/Services is designed;

(iii) Product/Services from which Smiths' and/or vendor's trademark or serial number has been altered, removed, or obliterated without Smiths' written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap;

(iv) Product/Services that has been in storage or immobilized for one year or more after delivery.

(I) SMITHS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE; AND THE EXPRESS WARRANTY SET FORTH IN THIS ARTICLE IS IN LIEU OF ANY SUCH WARRANTY AND ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF SMITHS.

(J) For purposes of the exclusive remedies set forth in this Warranty, and the limitations of liability set forth in Section 13 of the Terms and Conditions of Sale into which it is incorporated, "Smiths" shall be deemed to include Smiths, its subsidiaries, and their affiliates, directors, officers, employees, agents, representatives, subcontractors, and suppliers of all of them.

(K) This Warranty is non-transferable and is applicable only to the original Customer.

(L) This Warranty shall not be extended, altered or varied except by written instrument executed by Smiths.

(M) Any official action or legal proceeding for breach of this Warranty must be commenced within thirty (30) months after acceptance of the Product/Services.

12. TRADEMARKS/COPYRIGHTS: Smiths makes no warranty that the Product/Services are free from, and shall not be liable to Customer for, infringement of the intellectual rights (including patents, trademarks and copyrights) of others, and Customer agrees to assume all risks associated therewith. Customer agrees to hold Smiths harmless against any claim for infringement arising out of compliance with Customer's drawings, specifications, requirements or instructions.

13. LIMITATIONS OF LIABILITY AND INDEMNITY:

AS PROVIDED IN THE WARRANTY IN SECTION 11 ABOVE, SMITHS' LIABILITY FOR BREACH OF WARRANTY SHALL BE LIMITED TO THE REMEDIES THEREIN PROVIDED. WITH RESPECT TO OTHER BREACHES OF CONTRACT, SMITHS SHALL HAVE NO LIABILITY IN EXCESS OF THE AMOUNT OF THIS ORDER. IN NO EVENT SHALL SMITHS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF REVENUES, LOSS OF BUSINESS, OR FAILURE OR DELAY IN PERFORMANCE, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY, EVEN IF SMITHS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. NOR SHALL SMITHS BE RESPONSIBLE FOR ANY CLAIM AGAINST CUSTOMER BY A THIRD PARTY.

To the fullest extent permitted by applicable law, Customer shall defend, indemnify, and hold harmless Smiths and its affiliates and their respective officers, partners, directors, employees, agents, successors, and assigns ("Smiths Parties") from and against any and all losses, claims, damages, liabilities, expenses (including, without limitation, fees and disbursements of legal counsel and expenses of litigation) or other obligations (collectively "Losses") and threatened Losses to the extent they arise from or in connection with the purchase of the Product/Services by Customer, including but not limited to any of the following: (i) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person, and the damage, loss, or destruction of any real or tangible personal property; (ii) any action taken by or on behalf of Customer in the performance of this Order that causes Smiths to be obligated to indemnify, defend, and/or hold harmless any third party; (iii) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of Customer, its employees, agents, or subcontractors acting in its or their capacity as an employer or potential employer with respect to the claimant; and (iv) any claim by Customer or Operator, whether based on warranty or other contract breach, negligence or other tort or on any strict liability theory, for matters disclaimed in subsection (B) above. Customer shall fully indemnify and completely hold harmless the Smiths Parties as provided above, whether or not negligence or other fault of any of the Smiths Parties contributed to, or is claimed or alleged to have contributed to, the claim, action, damage, loss, cost, liability or expense. The only instance in which Customer shall not fully indemnify and completely hold harmless the Smiths Parties as set forth above is where the claim is based solely upon the alleged fault of Smiths and Smith's fault is adjudicated to be the sole cause of all of the Losses.

(D) Smiths shall not be liable for failure to deliver, for delay in delivery, or for any losses or damage to Customer, or to the Product/Services occasioned by delays, in the performance of Smiths' obligations, due to: (i) any cause beyond Smiths reasonable control or the control of Smiths' suppliers or subcontractors; (ii) an act of God, act or omission of Customer, act of civil or military authority, fire, terrorism, strike or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in transportation; or (iii) any other commercial impracticability.

(E) The conditions to performance specifically stated in this provision and elsewhere in this Order shall be the only conditions precedent or subsequent to an absolute duty of performance on the part of Customer and Smiths. Any official action or legal proceeding by Customer in connection with this Order, other than provided for elsewhere in this Order, must be commenced within one (1) year from delivery. In no event of breach or repudiation of this Order by Smiths shall Smiths be liable for indirect, special, third party, incidental, or consequential damages, including without limitation lost profits, data, or goodwill, and Customer hereby agrees not to make any such claim on Smiths. Customer agrees to defend, indemnify and hold harmless

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Smiths from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by Smiths with respect to any of Customers export or re-export activities contrary to Section 19 – Export & Import Controls.

14. TAXES: Sales and use taxes, payable by Customer, which are presently or may hereafter be imposed by any taxing authority, are not included in the sale price. Any direct or excise tax or import or customs exaction payable by Smiths, which may hereafter be imposed by any taxing authority, wheresoever located, upon the manufacture, sale or delivery of products covered by this order, or any increase in rate of any such tax or import or customs exaction now in force, shall be added to the sales price. If such charge is not collected at the time of payment or sale price, Customer will hold Smiths harmless.

15. CHANGES AND TERMINATION: (A) Smiths shall have the right, in its sole discretion, to terminate this Order if Customer: (i) is unable to pay its debts generally as and when they become due; (ii) is the subject of a legal process declaring it insolvent; (iii) ceases or threatens to cease carrying on its business; or (iv) commits a substantial breach of this Order which is incapable of remedy.

(B) Customer may make a written request for amendment, modification, or termination. If a request for amendment or modification is accepted by Smiths, and any changes cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Wherever the cost of property made obsolete as a result of the change is included in the price adjustment, Customer shall have the right to prescribe the manner of disposition of such property. If request for termination is accepted by Smiths, equitable provision shall be made to Smiths for a recoupment of all costs incurred under the Order and for reasonable profit based on time and costs expended. The Order shall continue in effect until such time as payment is received. A written request as specified herein shall give Smiths adequate reason to demand written assurance of Customer's ability and intent to carry out the Order.

16. MERGER AND SEVERABILITY: This Order contains the total agreement of the Parties, and all agreements entered into prior to or contemporaneously with the execution of this agreement are excluded whether oral or in writing, except that a contemporaneous writing, signed by both Parties, and firmly attached to this tender, shall be considered part hereof. If any provision of this Order shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not effect the remaining provisions of this Order, all of which shall remain in full force and effect.

17. DISPUTE RESOLUTION, GOVERNING LAW, AND FORUM: (A) This Order shall be governed by, and construed in accordance with, the laws of the State of Colorado, without the application of conflict of laws principles. **THIS ORDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** Notwithstanding the foregoing, the federal laws of the United States of America shall be the governing laws, to the extent appropriate, with respect to issues involving patent, copyright, or trademark.

(B) In the event a dispute arises under or relates to this Order, the Parties shall diligently attempt to resolve the dispute within thirty (30) days from the date either Party gives written notice to the other of its intent to invoke this provision, during which period neither Party may commence legal action to assert its rights against the other. In the event the Parties do not resolve the dispute within the thirty (30) day period referenced above, either Party may institute legal action to pursue any right or remedy it may have against the other Party. Any legal action or proceeding with respect to this Order shall be brought and maintained in the courts of the State of [jurisdiction] or of the United States of America for the District of [jurisdiction]. By execution of this Order, Customer hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. No action in law or equity arising out of this Order may be brought by Customer more than two years after the cause of action has first arisen.

(C) Customer further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding if such process shall be in writing and either shall be delivered in person or sent by registered or certified mail (return receipt requested), postage pre-paid, and addressed to Customer at the address of Customer for notices under this Order. Nothing herein shall affect the right of Smiths to serve process in any other manner permitted by law or to

commence legal proceedings or otherwise proceed against Customer in any other jurisdiction.

(D) Smiths shall have the right to collect from Customer its reasonable expenses, including attorneys' fees, incurred in enforcing this Order.

(E) The rights and obligations herein shall survive completion of the final payment under this Order.

18. CONFIDENTIALITY: The Parties agree that, in the course of performance of this Order, it may be necessary and desirable for them to exchange confidential information. For example, all updates, repairs, replacements, fixes, modifications, and other changes to the Product/Services shall be considered Smiths' proprietary information. To accomplish this confidentiality, the Parties agree as follows: any Party disclosing confidential information to the other Party shall identify such information as confidential when disclosing it. The receiving Party shall not disclose confidential information of the disclosing Party to any person outside its employ, except when authorized by the disclosing Party. Any Party receiving confidential information under this Article shall maintain such information in confidence in the same manner it protects its own confidential information and shall use it only for the performance of this Order, and for no other purpose.

19. EXPORT AND IMPORT CONTROLS: Customer acknowledges and agrees that the ultimate destination of the Order Product/Services is in the United States, unless otherwise stated in writing. Customer shall not authorize or permit its employees, distributors, customers, brokers, freight forwarders, and/or agents to export or re-export any of the Order Product/Services to any foreign person without complying with applicable export and import laws and regulations of Customer's country and of the United States, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Customer agrees to obtain and properly utilize U.S. Government export authorization prior to exporting or re-exporting the Order Product/Services, either in their original form or after being incorporated into other end-items.

20. NOTIFICATION: Customer agrees to notify Smiths immediately if Customer is listed in any Denied Persons List, Entity List, or Specially Designated Nationals List, or if Customer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

21. LICENSE AND OWNERSHIP: To the extent that the Order Product/Services contain or are software, Smiths hereby grants to Customer a non-exclusive, non-transferable, personal license to use the software and related documentation. Customer's use of the Order Product/Services conclusively evidences its acceptance of this license and this Order, including this Section 20. Title to the software shall at all times remain with Smiths. Customer agrees that the software, all enhancements, related documentation, and derivative works are, and will remain the sole property of Smiths and includes valuable trade secrets. Customer agrees to treat the software and related documentation as confidential and to not copy, reproduce, sub-license, or otherwise disclose the software and related documentation to third parties. Customer agrees to not disassemble, decompile, reverse engineer, create derivative works from or otherwise translate, customize, localize, modify, add to, or in any way alter, rent, or loan the software or related documentation.

22. ASSIGNMENT: Neither Party shall assign this Order without the prior written consent of the other Party, except that Smiths may assign it to any of its parent, sister, or affiliate companies.

23. RELATIONSHIP: Nothing in this Order shall be construed to place the Parties in the relationship of partners or joint ventures, and the Parties shall have no power to obligate or bind the other in any manner whatsoever.

24. HEADINGS: Any headings or paragraph titles are for the convenience of reference only and shall not define, limit, or extend the scope or intent of this Order or any provision thereof.

25. PROPRIETARY INFORMATION STATEMENT: This quotation contains information proprietary to Kaelus, Inc. No part of this information may be reproduced or transmitted in any form without the prior written permission of Kaelus, Inc. This quotation supersedes all previous quotations and is valid for 30 days from date of issue, unless otherwise stated.