



TERMS AND CONDITIONS FOR END-CUSTOMERS PURCHASING JDSU PRODUCTS THROUGH JDSU AUTHORIZED CHANNEL DISTRIBUTOR PARTNERS

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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 Products or portions thereof nor allow or assist others to do so.

Marks and Labels. Customer acknowledges the goodwill associated with JDSU’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 Products, related documentation or packaging, without the express prior written consent of JDSU. Customer shall display JDSU’s and its licensors’ names and logos as well as the name of any Products on each copy of Software or Documentation made by Customer (provided that Customer shall not make any copies except as permitted by JDSU in a duly signed writing).

Firmware License. Subject to the terms and conditions of this Agreement, JDSU 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; JDSU 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 JDSU and/or its third party licensors which will apply to the use of the Firmware, and take precedence over these license terms.

Documentation License. JDSU grants Customer a non-sub-licensable, non-exclusive, non-transferable, limited license to use the Documentation that JDSU 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 JDSU in a duly signed writing.

Limited Product Warranty. Notwithstanding any provision to the contrary (but subject to the operation of any law to the extent it cannot be excluded), JDSU’s sole and exclusive obligations to Customer for any Product made by JDSU and sold hereunder are solely as described in this Section and the next Section below. For any Product which has been returned to JDSU under the RMA procedure (as defined herein) and which in the reasonable opinion of JDSU is determined to be defective in workmanship, material or not in compliance with the JDSU specification applicable to the Product and has in fact failed under normal use on or before: (i) for Software, ninety (90) days from the Delivery Date of the Software; and (ii) for all other Products one (1) year from the Delivery Date of the Product, unless otherwise stated in writing by JDSU. All third party products (including Software or Firmware) provided by JDSU carry only the original manufacturer’s warranty applicable to Customer. JDSU 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 JDSU 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 JDSU to reproduce and analyze the failure.

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 JDSU as suited for use with the Product; (ii) Customer’s failure to follow JDSU’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 JDSU or its authorized representatives; (vi) installation or maintenance of Product by someone other than JDSU or persons certified by JDSU; (vii) being accidentally damaged, disassembled, modified, misused, repaired or reworked (by any party other than JDSU 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) acts of God or other Force Majeure conditions.

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 JDSU, unless such modifications were directed or approved by JDSU 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 JDSU makes, at its sole discretion, available on its website or otherwise (for the avoidance of doubt, JDSU is not obligated to make any patches, updates, or revisions available outside the scope of specific maintenance agreements); (v) build to print Product and any other Product that JDSU provides in accordance with Customer’s request, specifications, or instructions, unless JDSU agrees in a duly signed writing that the provided Product shall be covered by this limited warranty; and (vi) Product not returned in accordance with JDSU’s RMA procedure.

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

Exclusive Remedies. If any Product materially fails to conform to the limited warranty set forth in this Section (Limited Warranty) and actually fails during the applicable warranty period and under normal use, JDSU shall, at its sole discretion (i) repair or replace the non-conforming Product to remedy the non-conformity identified by Customer in accordance with this Section (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 JDSU title and ownership of any parts that JDSU replaces.

Disclaimer. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION WILL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST JDSU WITH RESPECT TO ANY NON-CONFORMANCE OF PRODUCTS. EXCEPT AS SPECIFIED IN THIS LIMITED PRODUCT WARRANTY, JDSU MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY PRODUCT. JDSU 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.

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, JDSU will accept Products only if returned in compliance with JDSU’s Return Material Authorization process (“RMA”). Customer shall obtain a RMA number from JDSU prior to returning any Products and ship the Products prepaid and insured to the local care center or FCA point, as instructed by JDSU. If Customer returns Products without an itemized statement of claimed defects, JDSU will not evaluate the Products but will return them to the Customer at the Customer’s expense. Any Product that is returned to JDSU but which is found to meet the applicable specifications for the Product and/or is not defective in workmanship and materials shall be subject to JDSU’s standard examination charge in effect at the time, which shall be charged to, and paid for by, Customer.

LIMITATION OF LIABILITY

JDSU hereby agrees to indemnify, defend and hold harmless Customers from all claims, losses, liabilities, costs,

expenses, actions and suits for damages, excluding all consequential and special damages, arising from the Products regardless of the form of action alleged. In no event shall JDSU hereunder be liable for damages, in the aggregate, in excess of the value of Product(s) which is the basis of the claim.

INFRINGEMENT CLAIMS.

JDSU will defend or settle any claim against Customer that Products (excluding build to print products) infringe a third party's copyright, trade secret, U.S. patent or third-party intellectual property right; provided Customer promptly notifies JDSU in writing, and cooperates with and provides control of the defense and settlement to JDSU, to the extent legally permissible. In the event of an infringement claim, JDSU will pay (a) all defense costs, and (b) all settlement amounts and court-awarded damages. If such a claim appears likely, JDSU may, at its sole option, modify the Product(s) to make it non-infringing, procure any necessary licenses, or replace it with a non-infringing model. If JDSU determines that none of these options is reasonably available, JDSU will, upon Customer's return of the Product(s), provide a prorated refund of the fees that Customer paid for the Product(s), depreciated on a 36 month (Software) or 60 month linear basis for Hardware Products. Notwithstanding the foregoing, JDSU has no obligation for any claim of infringement to the extent arising from: (a) JDSU's compliance with, or use of, Customer's designs, specifications, instructions or technical information; (b) Product modifications by Customer or other third party; (c) Product use prohibited by applicable Documentation, JDSU's specifications or related application notes; or (d) use of the Product with products not supplied/approved by JDSU unless such use arises from normal usage of the Product in accordance with industry standards. This section states JDSU's entire liability for infringement claims.