



## TERMS OF SALE FOR HLI SOFTWARE LICENSE (WHEN PURCHASED SEPARATELY)

### 1. ORDER ACCEPTANCE AND GOVERNING TERMS

Buyer agrees to be bound by and to comply with all the standard terms set forth herein from Hamar Laser Instruments, Inc. (Hamar), and those terms and conditions specified in the written Order Confirmation from Hamar (collectively the "Terms") issued at the time Buyer's purchase order for a Hamar software license is accepted by Hamar's Danbury, Connecticut office. The Terms shall exclusively govern the purchase by Buyer from Hamar of such Hamar software license(s) (the "Order") to use such software in connection with Hamar laser products (the "Goods") and shall be considered in effect at the time Hamar's written Order Confirmation is delivered to Buyer. Any terms and conditions on Buyer's purchase order which in any way vary from, conflict with or add to the Terms are rejected and shall not be binding on Hamar unless expressly agreed to in writing by Hamar. No implied conditions or specifications shall be binding upon Hamar. These Terms constitute the entire agreement between the parties hereto and shall supersede all previous commitments, conversations, correspondence, representations and agreements (oral or written) between the parties with respect to the Order. In the event of a conflict between these standard terms and any terms on the face of the Order Confirmation, the terms on the face of the Order Confirmation will govern.

### 2. PRICES, PAYMENT TERMS AND SHIPPING TERMS FOR GOODS

Quoted prices are subject to change without notice, prior to acceptance of the Buyer's order by written Order Confirmation from Hamar.

Payment terms for USA Buyers are 2% 10, Net 30 days from invoice date. International Buyers must prepay prior to shipment. Delays in acceptance of the Order by the Buyer, for any cause, shall not be considered sufficient cause for delay in payment beyond the due date. Interest at the rate of 1.5% per month will be charged on past due invoices.

Delivery of the Order shall be EXW, Danbury, Connecticut (Incoterms 2010), and do not include shipping charges and insurance charges, or taxes, which are the responsibility of the Buyer. The prices quoted are subject to the addition thereto and payment by the Buyer of any taxes or additional cost due to federal, state or municipal legislation.

### 3. TITLE AND DELIVERY DATE OF GOODS

Delivery of the Order by Hamar to a carrier in Danbury shall constitute passage of title to Buyer. The carrier shall be deemed as acting for the Buyer and all risks thereafter shall be the Buyer's. Delivery dates are approximate based on previous commitments and conditions at time of quotation and are subject to revision: (a) before receipt of Hamar's written Order Confirmation accepting an Order; and (b) at any time due to causes beyond Hamar's control, including but not limited to, government regulations, strikes, accidents, fires, and delays by Hamar's suppliers. Buyer will hold Hamar free of any liabilities for late delivery.

### 4. SOFTWARE LICENSE

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- i. **TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE HLI SOFTWARE AND THE FUNCTIONS CONTAINED IN AND/OR SERVICES PERFORMED OR PROVIDED BY SUCH HLI SOFTWARE (COLLECTIVELY REFERRED TO AS "HLI SOFTWARE AND SERVICES"), ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULT AND WITHOUT WARRANTY OF ANY KIND, AND HAMAR AND HAMAR'S LICENSORS (COLLECTIVELY REFERRED TO AS "HLP") HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH RESPECT TO HLI SOFTWARE AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OR SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR ACCURACY, OF QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS EXCEPT THAT IF HLI SOFTWARE AND SERVICES, UNDER NORMAL USE AND SERVICE, WITHIN ONE YEAR AFTER DATE OF SHIPMENT OF HLI SOFTWARE TO BUYER, FAILS TO PERFORM SUBSTANTIALLY IN COMPLIANCE WITH THE WRITTEN SPECIFICATIONS/DOCUMENTATION PROVIDED BY THE SOFTWARE SUPPLIER, AS VERIFIED BY HLI, BUYER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY IS EXCLUSIVELY LIMITED TO REPAIR OR REPLACEMENT, AT HAMAR'S OPTION, OF SUCH NON-FUNCTIONING HLI SOFTWARE.**



- ii. HLI DOES NOT WARRANT AGAINST INTERFERENCE WITH BUYER'S ENJOYMENT OF THE HLI SOFTWARE AND SERVICES, THAT THE HLI SOFTWARE AND SERVICES WILL MEET BUYER'S REQUIREMENTS, THAT THE OPERATION OF THE HLI SOFTWARE AND SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, THAT ANY HLI SOFTWARE SERVICES WILL CONTINUE TO BE MADE AVAILABLE, THAT THE HLI SOFTWARE AND SERVICES WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE, APPLICATIONS OR THIRD PARTY SERVICES, OR THAT DEFECTS IN THE HLI SOFTWARE AND SERVICES WILL BE CORRECTED. INSTALLATION OF HLI SOFTWARE MAY AFFECT THE USABILITY OF THIRD PARTY SOFTWARE APPLICATIONS OR THIRD PARTY SERVICES.
- iii. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL HAMAR BE LIABLE FOR PERSONAL INJURY, OR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, WHATSOEVER, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, CORRUPTION OR LOSS OF DATA OR INFORMATION, FAILURE TO RECEIVE OR TRANSMIT OR RECEIVE ANY DATA, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF, RELATING TO BUYER'S USE OR INABILITY TO USE THE HLI SOFTWARE AND SERVICES AND/OR ANY THIRD PARTY SOFTWARE OR APPLICATIONS IN CONJUNCTION WITH THE HLI SOFTWARE AND SERVICES, HOWEVER CAUSED, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) AND EVEN IF HAMAR LASER INSTRUMENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HAMAR'S TOTAL LIABILITY TO BUYER FOR ALL SUCH PROVED DAMAGES RELATING TO BUYER'S USE OF HLI SOFTWARE AND SERVICES (OTHER THAN AS MAY BE REQUIRED BY APPLICABLE LAW IN CASES INVOLVING PERSONAL INJURY) EXCEED THE AMOUNT BUYER PAID SUPPLIER FOR THE HLI SOFTWARE AND SERVICES. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- iv. BUYER ACKNOWLEDGES AND AGREES THAT USE OF THE HLI SOFTWARE AND SERVICES IS AT BUYER'S SOLE RISK AND ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE AND ACCURACY IS WITH BUYER. BUYER ACKNOWLEDGES THAT HLI SOFTWARE AND SERVICES ARE NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY, THE HLI SOFTWARE AND SERVICES COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT OR WEAPONS SYSTEMS. BUYER AGREES IT MAY NOT USE OR OTHERWISE EXPORT THE HLI SOFTWARE EXCEPT AS AUTHORIZED BY U.S. LAW AND LAWS OF THE JURISDICTION IN WHICH THE HLI SOFTWARE WAS OBTAINED. IN PARTICULAR, BUT WITHOUT LIMITATION, THE HLI SOFTWARE MAY NOT BE EXPORTED OR REEXPORTED (A) INTO ANY U.S. EMBARGOED COUNTRIES; OR (B) TO ANYONE ON THE U.S. TREASURY DEPARTMENT'S LIST OF SPECIALLY DESIGNATED NATIONALS OR THE U.S. DEPARTMENT OF COMMERCE DENIED PERSON'S LIST OR ENTITY LIST. BUYER AGREES IT WILL NOT USE THE HLI SOFTWARE FOR ANY PURPOSES PROHIBITED BY U.S. LAW, INCLUDING WITHOUT LIMITATION, THE DEVELOPMENT, DESIGN, MANUFACTURE OR PRODUCTION OF MISSILES, NUCLEAR, CHEMICAL OR BIOLOGICAL WEAPONS.

#### **5. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, WITH RESPECT TO ANY HLI SOFTWARE LICENSE PURCHASED UNDER THIS AGREEMENT, AND WHERE SUCH HLI SOFTWARE AND SERVICES IS ALLEGED TO BE THE DIRECT OR INDIRECT CAUSE OF ANY DIRECT OR INDIRECT LOSS OR DAMAGE TO THE BUYER OR ITS CUSTOMERS, THE SUM EQUAL TO THE INVOICED PRICE OF SUCH HLI SOFTWARE LICENSE SHALL BE THE CEILING LIMIT ON HAMAR'S LIABILITY FOR SUCH LOSS OR DAMAGE, WHETHER FOUNDED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT TORT LIABILITY OR BREACH OF WARRANTY), ARISING OUT OF OR RESULTING FROM (A) THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR (B) THE DESIGN, MANUFACTURE, DELIVERY, SALE, LICENSE, REPAIR, REPLACEMENT, OR ANY USE OF SUCH HLI SOFTWARE AND SERVICES. IN NO EVENT SHALL HAMAR HAVE ANY LIABILITY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.

#### **6. CONFIDENTIALITY**

(a) Buyer acknowledges that, under this Agreement, it will receive information not generally known to the public about the way in which Hamar develops, designs, produces or sells its products, including the Goods, or about the way which Hamar conducts its business including, but not limited to, information related to Hamar's products, product needs and specifications, and Hamar's markets, customers and sales ("Hamar Confidential Information"). Buyer also acknowledges this Agreement's terms are Hamar Confidential Information. Buyer will keep secret all Hamar Confidential Information and use such care as Buyer uses in maintaining the confidentiality of its own secret information, but no less than a reasonable degree of care. Buyer will use Hamar Confidential Information only to the extent necessary to perform its obligations under this Agreement. Buyer agrees not to analyze the composition or structure of the Goods or any other materials delivered by Hamar to Buyer, except with Hamar prior written consent.

(b) Buyer's confidentiality obligation under Section 6(a) above will not apply to the extent that any such information is: (i) known to Buyer prior to receipt of the same from Hamar, as shown by its written records; or (ii) disclosed in published form now or in the future in any publication; or (iii) becomes available to Buyer from any other source without breach of agreement or violation of law; or (iv) released by Hamar in writing from such confidentiality obligation.

#### **7. EXPORT ACKNOWLEDGMENT AND WARRANTY**

Buyer acknowledges that the Goods sold under this Agreement and technical information transmitted in connection therewith may be subject to export restrictions under applicable law, including the U.S. Department of Commerce Export Administration Regulations ("EAR") (15 C.F.R. Parts 730 to 774), and Buyer agrees to comply fully with same. Buyer warrants to Seller that it will not transmit, sell, transfer or convey any such Goods, technical information or software, or Goods produced through the use of same, to any country, or citizen or resident of a country, other than the United States without first securing written consent, if required, of the U.S. Department of Commerce.

#### **8. GOVERNING LAW**

All Orders will be considered Connecticut contracts and shall be interpreted for all purposes under the laws of the State of Connecticut, without regard to: (i) Connecticut's principles of conflicts of law; (ii) the 1980 United Nations Convention on Contracts of the International Sale of Goods; and (iii) other international laws. The parties agree to submit to the exclusive jurisdiction of the state and federal courts of Connecticut.