



TERMS AND CONDITIONS OF SALE

Decisionpoint systems, Inc., hereafter "Seller", makes all sales subject to the following terms and conditions:

- 1. Acceptance of Terms and Conditions:** Seller's acceptance of all purchase orders is expressly conditioned upon Buyer's agreement and consent to these terms and conditions, and Seller will not accept, and expressly rejects, any other terms and conditions (whether written or oral) originating from Buyer that purport to modify, add to, or otherwise vary the terms and conditions stated herein. Buyer's acceptance of, and agreement to, these terms and conditions shall be indicated by any of the foregoing: (a) Buyer's written acknowledgement or other act or expression of acceptance, (b) Buyer's offer to purchase products from Seller, or (c) Buyer's acceptance of shipment from Seller.
- 2. Shipment/Title/Risk of Loss:** Title to the product shall pass to Buyer upon delivery of product to the common carrier or Buyer's representative at Seller's dock. All risk of loss, damage, theft or destruction to the product shall be borne by Buyer at F.O.B. shipping point. No such loss, damage, theft or destruction to the product, in whole or in part, shall impair the obligations of Buyer under this agreement, all of which shall continue in full force and effect. Seller shall not be liable for any shipping delays. Buyer shall bear all applicable federal, state, municipal or other governmental tax, as well as any applicable import of customs duties, license fees and similar charges, however designated or levied on the sale of products (or delivery thereof) or measured by the purchase price paid for the products.
- 3. Shortages/Rejection of Delivery:** All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of 48 hours from receipt of product and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the product and acknowledged that NO shortage or grounds for rejection exists.
- 4. Security Interest:** Buyer grants Seller a security interest in all products sold hereunder and to all products now or hereafter acquired by Buyer from Seller, and to any proceeds due therefrom, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer agrees promptly to execute any financing statement or other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.
- 5. Payment:** Unless otherwise agreed in writing by Seller, all credit purchases must be paid in accordance with Seller's normal terms of sale, which are Net 30 from date of invoice. All past due amounts are subject to a 1.5% monthly financing charge on the outstanding balance or the maximum permissible under applicable law. All drafts dishonored for any reason shall be assessed a \$25.00 service charge. In the event that Buyer stops payment on any drafts issued to Seller, for any reason, Buyer hereby recognizes that Seller will suffer damage, the exact amount of which cannot be determined with certainty, and Buyer shall pay Seller liquidated damages in the amount of \$500 for each such draft in addition to the purchase price. Seller has no continuing obligation to deliver products on credit, and credit approval may be withdrawn by Seller at any time and without prior notice.
- 6. Returns:** The terms for all product returns, for whatever reason, are limited to those set forth in Seller's return merchandise authorization ("RMA") policies and procedures, which may be modified in any manner by Seller at any time. All returns must be accompanied by an RMA from Seller. Buyer shall receive in-house credit only for all valid returns.
- 7. No Warranties by Seller:** Product warranties, if any, are provided by the manufacturer or publisher of the Products. Seller makes no warranties, and shall have no liability related to warranties, whatsoever. In no event shall Seller be liable for any consequential damages or damages of any kind or nature alleged to have resulted from any breach of warranty. Seller does not warrant the merchantability of the products or their fitness for any particular purpose. Seller makes no warranty, express or implied.
- 8. Events of Default:** Buyer shall be in default under this agreement upon the happening of any of the following events or conditions ("event of default"): (a) nonpayment by Buyer of payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller, (b)

nonperformance of any obligation, covenant or liability contained in this agreement or any other agreement or document between Buyer and Seller, (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer, and (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by, Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) or the product.

9. **Software:** All software (including firmware) furnished to Buyer is on a licensed basis only. Seller grants to Buyer a non-transferable and non-exclusive license to use each software or firmware program delivered hereunder ("Licensed Program"). Each such license grants Buyer the authority to use the Licensed Program in machine-readable form only, and, in the case of software supplied with hardware, only on systems supplied by Seller to Buyer under this Agreement. Such license may not be assigned, sublicensed or otherwise transferred by Buyer without prior written consent of Seller, and in the case of a permitted transfer, Buyer's transferee shall be subject to the terms set forth in this Agreement, and Buyer shall provide evidence of such to Seller prior to transfer. Unless otherwise provided by law, no right to copy a Licensed Program in whole or in part is granted. Buyer shall not modify, merge, or incorporate any form or portion of a Licensed Program with other program material, create a derivative work from a Licensed Program, or use a Licensed Program in a network. Buyer agrees to maintain Seller's copyright notice on the Licensed Programs delivered hereunder, and to include the same on any authorized copies it makes, in whole or in part. Buyer agrees not to decompile, disassemble, decode or reverse engineer any Licensed Program delivered to Buyer or any portion thereof. Use, duplication or disclosure of computer software and documentation by any Government entity is subject to restrictions set forth in subparagraphs (a) through (d) of the Commercial Computer-Restricted Rights clause at FAR 52.227-19, in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause of DFARS252.227-7013, the Rights in Data clause of PM9.31 of the U.S. Postal Service Procurement Manual, or successor clauses as such regulations may be amended from time to time, or in similar clauses in other Agency FAR Supplements when applicable. This Agreement does not grant Buyer the right to use the Seller's trademarks, trade names or service marks, or other designations in any promotion or publication, without the prior written consent of the Seller.

10. **Non-Hire:** Buyer agrees that during the period that Seller is providing services to Buyer, and for six (6) months thereafter, Buyer shall refrain from soliciting, hiring or accepting services from any person who is proposed to, or introduced to, Buyer by Seller or who at any time provided services to Buyer through or on behalf of Seller, except through Seller.

11. Remedies of Seller:

a. **In General:** Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) demand or, without demand, sue for amounts then due or thereafter accruing under any invoice, bill or other documentation evidencing Buyer's indebtedness, (2) suspend deliveries as to any or all product, (3) take possession of the product wherever found and for this purpose enter upon any premises of Buyer and remove the product, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal, (4) cause Buyer, at its expense, to promptly return the product to Seller in good, like-new condition, (5) sell the goods, or any part thereof at public or private sales (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten days prior to the date thereof shall constitute reasonable notice thereof to Buyer, and (5) exercise any and all rights to which is entitled in law or equity.

b. **Mitigation of Damages:** Should Seller repossess any of the product because of Buyer's default, Seller may make a commercially reasonable effort to sell such product at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party buyers for said products.

c. **Collection Costs:** In the event of default on the part of Buyer hereunder, Buyer shall pay any and all collection costs, and costs of such other of Seller's remedies which Seller incurs, including reasonable attorneys' fees and costs incurred by Seller.

d. **Rights and Remedies Not Exclusive:** No right or remedy conferred upon or reserved to Seller by this agreement shall be exclusive of any other right or remedy provided herein or by law. All rights or

remedies conferred upon Seller by this agreement and by law shall be cumulative and in addition to any other right or remedy available to Seller.

12. **Time of the Essence:** Time is of the essence of this agreement.

13. **Indemnification:** Buyer agrees to indemnify and hold Seller and its officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from Buyer or any third party using in any manner, or selling the product provided under this agreement, , including, any alleged breach of warranty or any damages and cost arising from any alleged infringement of patent or trademarks or the violation of copyrights by products ,or otherwise. Any defense provided hereunder shall be by counsel of Seller's choice. Seller shall have no duty to defend, indemnify, and hold harmless Buyer from and against any or all damages and cost incurred by Buyer for any reason whatsoever, including, any alleged breach of warranty or any damages and cost arising from any alleged infringement of patent or trademarks or the violation of copyrights by products, or otherwise.

14. **Limitation of Liability:** In the event that a product's malfunction leads to damage or injuries to the product, to Buyer's business, the end-user's business, to any third party, to other equipment, or residence, or to the employees or to other persons, Seller shall not be liable for such damages or injuries. Buyer understands and agrees that if Seller shall be found liable for loss or damage caused by failure of Seller to perform any of Seller's obligations, or the failure of the product in any respect whatsoever, Seller's liability shall be limited to the price paid by Buyer for such product, and this liability shall be exclusive. Buyer understands and agrees that the provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or non-performance of any of Seller's obligations or from negligence, active or otherwise, of Seller, or its agents, servants, assignees or employees. IN NO EVENT SHALL SELLER BE LIABLE FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. **Assignment:** This agreement and all rights, obligations and performance hereunder may not be assigned without prior written consent of Seller.

16. **Waiver:** No delay or omission by Seller to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by Seller of any term, condition or agreements to be performed by Buyer or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other term, condition or agreement herein contained, or breach thereof, as the case may be. No change, waiver, or discharge hereof shall be valid unless presented in writing to Seller and signed by an authorized representative of Seller.

17. **Severability:** If any section, term, condition or portion thereof shall be found to be illegal or void as being against public policy, it shall be stricken and the remainder of this document shall stand as the original. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS, IF OTHERWISE APPLICABLE.

18. **Governing Law/Venue:** This agreement shall be construed and enforced in accordance with the laws of New Jersey without regard to the conflicts of law provisions thereof. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of New Jersey. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of New Jersey as its agent for service of process in the United States.

19. **Entire Agreement/Modification:** The parties intend this agreement to be the complete statement of the terms of their agreement. This agreement replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No course of prior dealing or usage of trade shall be relevant to amend or interpret this agreement. This agreement may not be changed modified or amended except by an instrument in writing signed by Seller and Buyer. All Products delivered to Buyer hereunder may be for resale and Buyer acknowledges and shall advise its customer that the Products may be controlled for export by the U.S. Department of Commerce and the Products may require authorization prior to export from the United States.

20. Force Majeure: Seller shall not be liable for any delay or failure to comply with any agreed upon terms resulting from any circumstances or act beyond Seller's control.