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## General Terms

These General Terms govern transactions by which Customer acquires Products and Services from Dynamix Group, Inc. (“Dynamix”). Capitalized terms are defined in Section 12.

### 1. Acceptance and Orders

**1.1 Acceptance of Agreement.** Customer accepts this Agreement by either (a) signing an Order Document that incorporates this Agreement by reference or (b) other means that binds Customer to this Agreement.

**1.2 Orders.** Dynamix proposes Products and Services for sale by presenting Order Documents to Customer. Customer accepts an Order Document by either (a) signing the Order Document and returning it to Dynamix or (b) issuing a Purchase Order to Dynamix which references the Order Document by document number. The foregoing is an “Order.” Products and Services become subject to this Agreement when Dynamix accepts Customer’s Order by providing the Product or Service to Customer. Confirmation of Dynamix’s receipt of Customer’s Order does not constitute Dynamix’s acceptance of Customer’s Order.

### 2. Prices and Payment

**2.1 Invoices.** Dynamix invoices Products upon their Shipment or otherwise as provided in an Order Document or an Additional Terms Attachment. Dynamix invoices Services in accordance with the payment schedule in the Statement of Work. All amounts are due within 30 days of the invoice date. Undisputed amounts past due may be assessed a late payment charge of 1.5% per month from the payment due date to the date of receipt of payment.

**2.2 Additional Amounts.** In addition to the price of Products and Services, Customer agrees to pay any applicable sales, use or similar taxes, fees or duties (unless Customer or Customer’s lessor supplies exemption documentation prior to invoicing), late payment charges, shipping charges, and reasonable travel and living charges approved by Customer.

### 3. Products

**3.1 Reseller Role.** Dynamix is an authorized reseller of Products and is not an OEM. Dynamix establishes the price and general business terms for the provision of Products. OEMs establish Customer’s rights and obligations with respect to Products other than as expressly set forth in this Agreement.

**3.2 Machines.** Dynamix transfers title to Machines to Customer or, if Customer chooses, Customer’s lessor upon Shipment. Dynamix bears the risk of loss for Machines until they are delivered to Customer. Thereafter, Customer assumes the risk. However, Customer agrees (a) upon delivery, to note any missing items or obvious shipping damage on the bill of lading and report this to Dynamix immediately; (b) subsequently, within 10 business days of delivery, to inspect Machines and report any discovered damage in writing to Dynamix; and (c) to follow Dynamix’s related instructions. Otherwise, Customer is liable for any loss Dynamix cannot recover as a result of Customer’s failure to comply with the requirements of this paragraph. Except for Machines that the OEM agrees to set-up, installation is not included in the price of a Machine.

**3.3 Order Cancellation.** Customer may cancel an Order prior to Shipment of Products if permitted by the order cancellation policies of Dynamix’s Distributors, and Customer agrees to pay any cancellation charges Dynamix incurs as a result of such cancellation. Once Shipment has occurred, Products may only be returned or terminated as described in Sections 3.4 and 3.5 below.

**3.4 Return of Machines and Programs.** Machines which are damaged or defective will be repaired, replaced or refunded. Customer may return a Machine or Program within 30 days of delivery if permitted by the return policies of Dynamix’s Distributors. However, installed Machines and Programs are generally not returnable. Dynamix will credit Customer for any approved return, less any restocking charges Dynamix incurs as a result of such return. Shipping charges are not refundable.

**3.5 Discontinuance of OEM Services.** Unless permitted under the terms of an OEM Services agreement, OEM Services may not be discontinued during their term, and prepaid amounts are not refundable. Any permitted refunds for discontinued prepaid OEM Services will be based upon the refund Dynamix receives from the OEM.



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## 4. Services

**4.1 Personnel.** Dynamix assigns personnel who are qualified to perform the tasks under a Statement of Work and is responsible for the supervision, direction, control, and compensation of Dynamix's personnel. Subject to Customer's approval, Dynamix may engage subcontractors to perform or assist in performing Services, in which case Dynamix remains responsible for the fulfillment of Dynamix's obligations under this Agreement and for the performance of the Services.

**4.2 Deliverables Ownership.** Deliverables that Dynamix creates solely for Customer under a Statement of Work ("Project Materials") are works for hire under applicable law, and Dynamix assigns all right, title and interest in Project Materials to Customer. Dynamix agrees to take all actions reasonable requested by Customer to evidence Customer's ownership of Project Materials.

**4.3 Exceptions to Ownership and License.** Project Materials exclude Deliverables provided to Customer but not created for Customer under a Statement of Work ("Existing Works"). Some Existing Works are subject to a separate license agreement ("Existing Licensed Works") and are licensed accordingly. Dynamix grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute and prepare derivative works of Existing Works that are not Existing Licensed Works.

**4.4 Termination of a Service.** Either Customer or Dynamix may terminate a Statement of Work for cause if the other materially fails to meet its obligations concerning the Service and fails to cure such breach within ten (10) days. Customer may terminate a Statement of Work for convenience subject to any termination charges specified in the terminated Statement of Work. Unless Customer terminates a Statement of Work for cause, Customer agrees to pay Dynamix for Services provided and travel and living expenses incurred through the effective date of the Statement of Work's termination.

## 5. Warranty

**5.1 Representations and Warranties.** Dynamix warrants that it is authorized to sell Products and that the Products will conform to their description in an Order Document. Dynamix warrants that it will perform Services using reasonable care and skill and that the Services will conform substantially to their description in a Statement of Work.

**5.2 Disclaimers.** THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES FROM DYNAMIX AND DYNAMIX MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. Any Product warranties are provided directly by the OEM to Customer. Unless otherwise provided in writing, used Machines are provided "as is" and do not have warranties of any kind. Dynamix does not warrant uninterrupted or error-free operation of any Product or Service or that any Product or Service Customer acquires from Dynamix will meet Customer's business needs.

**5.3 Exclusive Services Remedy.** With respect to the Services warranty stated above, Dynamix's sole obligation and Customer's sole remedy shall be Dynamix's re-performance of the applicable Services within a reasonable time or a refund of the charges paid for the defective Services.

## 6. Indemnification

**6.1 Third Party Claims.** If a third party asserts a claim against Customer (a) for damages for bodily injury (including death) and/or damage to real property and tangible personal property that arise out of the negligence or intentional acts or omissions of Dynamix or (b) that a Deliverable that Dynamix provides to Customer under this Agreement infringes that third party's patent or copyright, then Dynamix will defend Customer against that claim at Dynamix's expense and pay all costs, damages, and reasonable attorney's fees that a court finally awards against Customer or that are included in a settlement approved by Dynamix, provided that Customer (a) promptly notifies Dynamix in writing of the claim and (b) allows Dynamix to control, and reasonably cooperates with Dynamix in, the defense and related settlement negotiations.



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**6.2 Infringement Claim Remedies.** If an infringement claim is made or appears likely to be made, Customer agrees to permit Dynamix, in Dynamix's discretion, either to (a) enable Customer to continue to use the Deliverable, (b) modify it, or (c) replace it with one that is at least functionally equivalent. If Dynamix determines that none of these alternatives is reasonably available, then on Dynamix's written request, Customer agrees to promptly return the Deliverable to Dynamix and/or discontinue its use. Dynamix will then refund the money that Customer paid for the Deliverable.

**6.3 Infringement Claim Exceptions.** Dynamix has no obligation regarding any infringement claim based on any of the following: (a) anything provided by Customer that is incorporated into a Deliverable; (b) Dynamix's compliance with any designs, specifications, or instructions provided by Customer; (c) a Deliverable's use other than in accordance with its applicable licenses and restrictions; (d) any modification of a Deliverable made by Customer; or (e) a Product.

**6.4 Extent of Obligation and Remedy.** This Indemnification Section 6 states Dynamix's entire obligation and Customer's exclusive remedy regarding any third party infringement claims.

## 7. Limitation of Liability

**7.1 Liability Cap.** Regardless of the basis of the claim, Dynamix's entire liability for all claims between the parties to this Agreement or otherwise related to this Agreement will not exceed the greater of \$100,000 or the charges (if recurring charges, 12 months' charges apply) paid for the Product or Service that is the subject of the claim.

**7.2 Items Not Subject to Cap.** The following amounts are not subject to the cap on the amount of damages: (a) amounts payable under the Indemnification Section 6 above; (b) damages for bodily injury (including death) and damage to real property and tangible personal property for which Dynamix is legally liable; and (c) damages to the extent arising out of Dynamix's gross negligence, willful misconduct or other conduct for which liability may not be limited under applicable law.

**7.3 Exclusions.** EXCEPT AS EXPRESSLY REQUIRED BY LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR FOR OUR BREACH OF THE CONFIDENTIALITY SECTION 8 BELOW, UNDER NO CIRCUMSTANCES IS DYNAMIX LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT, OR ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS, REVENUE, GOODWILL, ANTICIPATED SAVINGS OR DATA), EVEN IF INFORMED OF THEIR POSSIBILITY.

## 8. Confidentiality

**8.1 Confidential Information.** Confidential Information shall mean any information or data of or about the business, products, services, employees or clients of either Customer or Dynamix that (a) is confidential and proprietary to the disclosing party, derives economic value from not being generally known and is the subject of reasonable efforts by the disclosing party to maintain its secrecy or (b) the disclosing party obtains from any third party which the disclosing party treats as proprietary whether or not owned by the disclosing party. Confidential Information also includes Background Screening Data (as defined below) and Trade Secrets (as defined below). Background Screening Data shall mean all information concerning an individual that is obtained as a result of a background screening investigation. Trade Secrets shall include any Confidential Information as defined in and protected by Applicable Laws. For purposes of this Section 8, Applicable Laws shall be defined as the laws of the state of incorporation of the discloser of Confidential Information.

**8.2 Exceptions.** Except with regard to Background Screening Data, Confidential Information does not include information that (a) is already known by the other at the time of the disclosure, (b) is publicly known or subsequently becomes publicly known, (c) is obtained from a third party without an obligation of confidentiality, or (d) is developed independently without reference to the other party's Confidential Information. In addition, if the Confidential Information must be disclosed due to a judicial or governmental requirement or order, then (a) the receiving party must give the disclosing party reasonable prior notice of such requirement or order to give the disclosing party a reasonable opportunity to object or to seek a protective order or other appropriate remedy, (b) the receiving party must reasonably cooperate with the disclosing party so that it may object or seek a protective order or other appropriate remedy, and (c) the receiving party in any event shall disclose only that portion of the Confidential Information that is legally required to be disclosed. However, Confidential Information shall not include any general ideas, concepts or know-how gained through Dynamix's provision of Services to Customer.



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**8.3 Obligations.** Each party agrees that, except to fulfill its obligations to the other party under this Agreement, neither party will use any Confidential Information of the other; nor will either party disclose, communicate or disseminate (orally, in writing, or electronically) any Confidential Information of the other to any third party. These obligations shall apply for the term of this Agreement and for two (2) years after termination of this Agreement. Notwithstanding the foregoing, for Background Screening Data, these obligations shall continue indefinitely, and for Trade Secrets, these obligations shall continue to apply in accordance with Applicable Laws.

**8.4 Return of Confidential Information.** Each party agrees that, upon written request by the other party, the other party will return or destroy the Confidential Information of the other. Notwithstanding the foregoing, Customer agrees (a) to use our Background Screening Data solely for the purpose of determining whether Dynamix's personnel meet Customer's requirements for access to Customer's premises and systems and (b) to destroy and not to retain Dynamix's Background Screening Data once such determination has been made.

**8.5 Injunctive Relief.** The parties acknowledge that any unauthorized use or disclosure of any Confidential Information by the receiving party may cause irreparable damage to the disclosing party, the remedies at law for such a breach may be inadequate, and that the disclosing party will, without prejudice to other remedies under applicable law or in equity, be entitled to seek injunctive and other equitable or legal relief to prevent or compensate for such unauthorized use or disclosure without the necessity of posting a bond.

## 9. Insurance

Dynamix agrees to maintain during the term of this Agreement, and at its expense:

**Worker's Compensation** insurance, as required by law, including employer's liability insurance with a limit of \$500,000 per occurrence;

**Commercial General Liability** insurance, covering bodily injury (including death) and property damage, with a limit of \$1,000,000 per occurrence, a general aggregate limit of \$2,000,000 and a completed operations aggregate limit of \$2,000,000;

**Automobile Liability** insurance, covering bodily injury (including death) and property damage with a limit of \$1,000,000 per occurrence;

**Errors and Omissions** insurance with an aggregate limit of \$5,000,000; and

**Umbrella insurance** with an aggregate limit of \$5,000,000 provided in excess of primary liability for employer's liability, commercial general liability, and automobile liability insurance.

## 10. Term, Termination and Modification

**10.1 Term.** The term of this Agreement begins on the Effective Date and continues until terminated as permitted below.

**10.2 Termination for Cause.** Either party may terminate this Agreement for cause if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

**10.3 Termination for Convenience.** Either party may terminate this Agreement for convenience upon 30 days written notice to the other. Termination of this Agreement will only terminate Customer's right to place new Orders under this Agreement. Termination of this Agreement does not terminate Orders previously accepted by Dynamix, and the provisions of this Agreement as they relate to such Orders remain in effect until fulfilled or otherwise terminated in accordance with their terms.

**10.4 Modification.** Dynamix may modify the Agreement (including these General Terms and Additional Terms Attachments) at any time by posting a revised version on the Dynamix website (<http://dynamixgroup.com/customer-agreement>). The modified terms will become effective upon posting and apply only to transactions after the modification date. By ordering any new Products or Services after the modification date of the Agreement, Customer agrees to be bound by the modified terms.

**10.5 Modification Date.** Dynamix last modified these General Terms on August 15, 2019.



# Customer Agreement

## 11. Miscellaneous

**11.1 Assignment.** Except as permitted below, neither party may assign this Agreement without the prior written consent of the other. The assignment of the Agreement within the legal entity of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. Assignment of Dynamix's rights to receive payments is not restricted.

**11.2 Compliance with Laws.** Dynamix will comply with laws applicable to Dynamix generally as a reseller of Products and provider of Services, and Customer will comply with applicable laws related to Customer's use of the Products and Services. Neither Customer nor Dynamix is obligated to take any action that would violate applicable law. Customer shall comply with the applicable export control and sanctions laws and regulations of the U.S. with respect to the Products and Services, including ensuring that, prior to any export outside the U.S., the Products and Services: (a) are not controlled items under the Export Administration Regulations of the Department of Commerce and (b) are not exported to any jurisdiction subject to an embargo or any person subject to sanction under applicable OFAC laws and regulations.

**11.3 Electronic Transactions.** Any signed document delivered by e-mail or in an electronic document format (such as .pdf), shall for all purposes be treated as if it were delivered containing an original manual signature and shall be binding upon such party in the same manner as though an originally signed copy had been delivered. The parties consent to such electronic means of contracting and further agree to the admissibility of computer records and electronic evidence in any dispute herein.

**11.4 Entire Agreement.** This Agreement is the entire Agreement between Customer and Dynamix regarding Customer's acquisition of Products and Services from Dynamix and supersedes any prior oral or written communications or agreements between Customer and Dynamix on this subject matter. Additional or different terms contained in or referenced by any written communication from Customer (such as a Purchase Order) are deemed objected to by Dynamix without further notice of objection, and all such additional or different terms are void and not binding between the parties.

**11.5 Non-solicitation.** During the term of this Agreement and for a period of six (6) months following termination of this Agreement, neither party, without the other party's written permission, shall, for any reason, solicit, offer, promise employment to, or employ any of the other party's employees who have worked together during the marketing and implementation process. In the event that a party violates this provision, then that party shall promptly pay the other party an amount equal to one-hundred percent (100%) of such employee's compensation in the preceding twelve (12) month period. The parties agree that the damages for breach of this section are difficult to estimate with any degree of certainty and that this amount has been agreed upon by the parties as a reasonable estimate for liquidated damages for expenses related to hiring and training employees and not as a penalty.

**11.6 Trademarks.** Neither Customer nor Dynamix grants the other the right to use its trademarks, trade names, or other designation in any promotion or publication without prior written consent.

**11.7 Relationship.** Dynamix is an independent contractor and not Customer's agent, joint venturer, partner or fiduciary.

**11.8 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**11.9 Force Majeure.** Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

**11.10 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

**11.11 Survival.** After termination of this Agreement for any reason, the following sections shall survive, and apply to both of Customer's and Dynamix's respective successors and assignees: 2 (Payment), 4.2 and 4.3 (Ownership and Licenses), 4.4 (Termination of a Service), 5 (Warranties), 6 (Indemnification), 7 (Limitation of Liability), 8 (Confidentiality), 11 (Miscellaneous), and 12 (Definitions), along with any other terms that by their nature extend beyond the Agreement's termination.



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**11.12 Governing Law.** Both parties agree to the application of the laws of the State of Georgia without regard to conflict of law principles.

**11.13 Dispute Resolution.** Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will use their best efforts to resolve all disputes, disagreements, or claims between the parties relating to this Agreement by negotiating in good faith to reach a just and equitable solution. IF THE PARTIES CANNOT REACH A SOLUTION WITHIN A PERIOD OF 60 DAYS FROM THE DATE THE NOTICE OF A DISPUTE IS FIRST RECEIVED BY THE OTHER PARTY, THEN ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF, SHALL BE FINALLY AND EXCLUSIVELY SETTLED BY ARBITRATION ADMINISTERED BY A SINGLE ARBITRATOR OF THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PARTIES WAIVE ANY RIGHT TO APPEAL THE ARBITRAL AWARD, TO THE EXTENT SUCH RIGHTS MAY BE LAWFULLY WAIVED. Notwithstanding the foregoing, each party retains the right to seek judicial assistance: (a) to compel arbitration; (b) to obtain injunctive relief or interim measures of protection pending arbitration; (c) to enforce any decision of the arbitrator(s), including the final award and (d) to collect any undisputed amounts due and owing hereunder.

**11.14 Timing of Claims.** Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, (a) neither party will file a demand for arbitration, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and (b) after such time limit, any demand for arbitration arising out of this Agreement or any transaction under it and all respective rights related to any such demand lapse.

**11.15 Contracting Authority.** Customer represents that the person executing this Agreement has the legal authority to enter into this Agreement on Customer's behalf.

## 12. Definitions

**Additional Terms Attachments** are documents that provide additional terms and conditions of sale for particular Products and Services identified therein, which are located at <http://dynamixgroup.com/customer-agreement> as updated from time to time.

**Agreement** is a collective term for these General Terms, Additional Terms Attachments and applicable Order Documents.

**Customer** is the party acquiring Products or Services from Dynamix under this Agreement.

**Deliverable** is a work of authorship created by Dynamix provided to Customer as part of a Service. The term "Deliverable" does not include Products.

**Distributor** is a person other than Dynamix who supplies Products to Dynamix for resale.

**Effective Date** is the date Customer first accepts an Order Document under this Agreement.

**Machine** is a hardware device manufactured by an OEM, including its resources, capabilities, features, conversions, upgrades, elements, firmware, microcode, or accessories, or any combination of them.

**OEM** is a person other than Dynamix who is the manufacturer of Machines, licensor of Programs, or performer of OEM Services.

**OEM Service** is a service (such as maintenance or software as a service) that is performed by an OEM and provided to Customer subject to the terms of any OEM Services agreement applicable to it. An OEM Service is a Product.

**Order Document** is a collective term for Sales Quotes and Statements of Work.

**Product** is a collective term for Machines, Programs, and OEM Services.

**Program** is a set of machine-readable instructions licensed by an OEM and provided to Customer subject to the terms of any license agreement applicable to it, and including components, audio-visual content (such as images, text, recordings, or pictures), license use documents or keys, and documentation.



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**Purchase Order** is a written document issued by Customer to Dynamix that serves as an acceptance of an Order Document. In the case a conflict between the items and prices listed on a Purchase Order with those listed on the referenced Order Document, the Order Document shall prevail.

**Sales Quote** is an Order Document that details the charges and descriptions of Products and/or Services to be acquired.

**Service** is the performance of tasks (including the provision of Deliverables) or the provision of assistance or support by Dynamix. The term "Service" does not include OEM Services.

**Shipment** is the occurrence of the event when (a) Machines are released for transport to Customer, (b) Programs are made available to Customer, or (c) OEM Services have commenced.

**Statement of Work** is an Order Document that details the tasks to be performed and the Deliverables to be provided as part of a Service.