

## Power Monitors, Inc. Terms and Conditions

**IMPORTANT:** Please read these Terms and Conditions (these “Terms”) carefully.

The terms and conditions of sale of any equipment or software (“Products”) by Power Monitors, Inc. (“PMI”) are limited to those contained herein. Any additional or different terms or conditions in any form delivered by the customer (the “Customer”) are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. By accepting delivery of the Products described in the applicable PMI invoice, the Customer agrees to be bound by and accepts these Terms unless the Customer and PMI have signed a separate agreement, in which case the separate agreement will govern.

These Terms constitute a binding contract between the Customer and PMI. The Customer acknowledges agreement and acceptance of these Terms by making a purchase of Products. These Terms are subject to change without prior notice, except that the Terms posted on PMI’s website or provided to the Customer at the time the Customer initially places or modifies an order will govern the order in question.

### **Shipment, Delivery, Inspection and Acceptance:**

**Prices:** The prices for the Products are listed in PMI’s catalogs and website and are subject to change at any time without notice. Prices for certain government, corporate and institutional customers may be set forth in a bid or other written agreement between the parties.

**Equipment Limited Warranty:** PMI warrants that, for a period of one (1) year after shipment (the “Equipment Warranty Period”), each new piece of equipment manufactured and sold is free of defects in material, workmanship, and construction and, when used in accordance with the operation manual, will perform to applicable specifications.

**Software Limited Warranty:** PMI warrants that, for a period of one (1) year after shipment or download (the “Software Warranty Period”), the software will perform substantially in accordance with the accompanying written material. Some states do not allow limitations on duration of an implied warranty, so the above indication may not apply to each state.

**Exclusions from Warranty.** PMI is not responsible for and PMI’s warranty obligations shall not apply to any Products that (a) have been subjected by person or entity other than PMI or its authorized representatives to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by PMI; (b) has been reconstructed, repaired or altered by persons or entities other than PMI or its authorized representatives; or (c) has been used with any products manufactured by a third party, or hardware, software or other products that have not been previously approved in writing by PMI.

**Disclaimer of Other Warranties:** EXCEPT AS EXPRESSLY OTHERWISE PROVIDED HEREIN, PMI MAKES NO WARRANTIES CONCERNING THE PRODUCTS AND/OR THE INTELLECTUAL PROPERTY RIGHTS (AS DEFINED BELOW) IN AND TO THE PRODUCTS AND PMI HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR ARISING BY CUSTOM OR TRADE USAGE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE PRODUCTS. The parties acknowledge that the preceding disclaimer represents bargained-for allocation of risk, and that the consideration received by PMI from the Customer represents such allocation of risk.

**Customer’s Exclusive Remedy for Defective Products:** This Section contains the Customer’s sole and exclusive remedy for defective Products. The Customer’s remedy under this Section is conditioned upon compliance with its obligations set forth in Subsections (a) and (b) of this Section. During the applicable Warranty Period, with respect to any allegedly defective Products: (a) the Customer shall notify PMI in writing of any alleged claim or defect within ten (10) business days after the date the Customer discovers, or upon reasonable inspection should have discovered, such alleged

claim or defect (but in any event before the expiration of the applicable Warranty Period); (b) the Customer shall ship such allegedly defective Products to PMI for inspection and testing by PMI in accordance with the section below entitled "Return Procedure;" (c) if PMI's inspection and testing reveals, to PMI's reasonable satisfaction, that such Products are defective and any such defect has not been caused or contributed to by any of the factors described in the section above entitled "Exclusions from Warranty," then PMI shall, in its sole discretion and at its expense, repairs or replace such defective Products; and (d) PMI shall ship to the Customer, at PMI's expense and risk of loss, the repaired or replaced Products. PMI will warrant replacement Products for the remainder of the original, applicable Warranty Period or for thirty (30) days after shipment of such replacement Products, whichever is longer.

**Return Procedure:** If any Product is allegedly defective, and as a condition to PMI's repair or replacement obligations above, the Customer must call PMI at 1-800-296-4120 before shipping the allegedly defective Products to PMI. If the alleged defect cannot be resolved over the phone through PMI Customer Support, PMI will issue a Return Authorization ("RA") number. For prompt service, all shipments of allegedly defective Products to PMI must include:

- The billing and shipping address for return of equipment
- The name and telephone number of contact for further information regarding the unit
- The description of the problem or work required
- The list of the enclosed items and their respective serial numbers
- The RA number given to the Customer by the responsible PMI Account Executive

Products returned to PMI must be shipped with freight charges prepaid. After repair or replacement, if necessary, PMI will return the Products FOB (freight on board) from Mt. Crawford, VA. If the Products are repaired under warranty obligation, freight charges (excluding air freight or premium services) will be refunded or credited to the Customer's account. Return equipment to: Power Monitors, Inc., 800 North Main Street, Mt. Crawford, VA 22841, Attention: Repair Department.

**Payment:** Payment will be made for Products purchased in the amount and pursuant to the terms set forth in the applicable invoice. If the Customer defaults in paying in full when due, then the total outstanding balance of all invoices on the Customer's account, together with the interest and collection costs, will be due immediately.

**Current Terms Offered:** Payment Options: 2% 15, 1% 30, Net 45. Discounts are to be taken on the Product subtotal, not to include sales tax or shipping. Discounts are to be calculated based on invoice date only, and payment is expected within the term in order to qualify for a discount. PMI retains a security interest in the Products until payment in full is received.

**Late Payments:** The Customer shall pay interest in the lesser amount of 1.5% per month or the highest rate permitted by law on any past due amount. The Customer shall pay PMI all costs and expenses incurred in exercising its rights to collect amounts due, including but not limited to reasonable attorneys' fees and court costs. In addition to all other remedies available under these Terms or at law or in equity, if the Customer fails to pay any amounts when due under these Terms, PMI may suspend the delivery of any Products, reject the Customer's purchase orders or cancel accepted purchase orders. PMI's rights hereunder, at law and in equity shall be cumulative.

**Invoice Disputes:** The Customer shall notify PMI in writing of any dispute with any invoice (along with substantiating documentation) within three (3) business days from the Customer's receipt of such invoice. The Customer will be deemed to have accepted all invoices for which PMI does not receive timely notification of dispute, and the Customer shall timely pay all undisputed amounts due under such invoices.

**Freight:** All shipments are sent FOB, Mt. Crawford, VA, via UPS ground. If the Customer prefers other shipping arrangements, the Customer must notify PMI at time the order is placed. If FOB Destination is preferred, additional fees will apply.

**Handling:** All orders are charged a handling fee of .5% of the Product total as shown on the applicable PMI invoice(s).

**Shipping Discrepancies:** Please verify receipt of all Products listed on the "Packing List" upon receipt of order. Please notify Power Monitors, Inc. within three (3) business days of any shipping discrepancies.

**Freight Damage:** If you receive a package that is damaged in transit please advise the carrier and refuse/return the shipment to Power Monitors, Inc. Freight damage that remains unreported beyond three (3) business days after receipt is the responsibility of the recipient.

**Demo Units:** If PMI supplies a demo unit to the Customer, then the Customer is responsible for returning the unit within three (3) weeks of receipt of the unit. If the unit has not been returned to PMI within three (3) weeks after receipt, and no request has been made by the Customer for an extension, then the Customer will be billed for the unit.

**Return Privileges:** All non-defective returns authorized by PMI, whether opened or unopened, will be assessed a minimum 15% restocking fee and must be authorized for return within thirty (30) days after receipt. No refunds will be issued after such 30-day period. All returns require an RA number before shipping. The Customer may obtain an RA by contacting its Account Executive at 1-800-296-4120. RA numbers will be valid for ten (10) days. Failure to return Products within such 10-day authorization period will be deemed to be an acceptance of the Products.

**Repair Service:** In the event that a Product requires repairs that are not covered by PMI's warranties above, the Customer shall contact an Account Executive at 1-800-296-4120 to request a RA number and return the Product pursuant to the Account Executive's directions. PMI will test the returned Products and will provide an estimate for the cost of repairs. The Customer's approval will be obtained before proceeding with repairs.

**Services Offered:** PMI may offer services under a separate PMI Master Service Agreement that renew, and as part of acceptance of the Products that such services are attached to, it is implied that such services will automatically renew for the same term originally purchased, unless the Customer notifies PMI at least 60 days in advance of the renewal that the Customer intends to cancel such services. (Services include: Canvass, DNP3, and Cellular Data Plans)

**Ownership and Proprietary Rights:** As between PMI and the customer, PMI does and shall exclusively own all right, title, and interest in and to all Intellectual Property (as defined below) that is disclosed to the Customer or incorporated in the Products, including without limitation, all versions and derivative works of the Products, and all modifications, enhancements, versions, corrections or improvements to the Products that are created or developed by, or on behalf of, PMI or as a result of the use of the Products by the Customer. In the event that the Customer acquires any Intellectual Property in or to any Products, the Customer agrees to, and does hereby, irrevocably assign all such right, title, and interest to PMI. The Customer hereby assigns and agrees to assign to PMI all ideas, information, data, concepts, know-how and methods relating to the operation, improvement and/or enhancement of the Products, and the Customer acknowledges and agrees that PMI shall be free to use all of the foregoing in connection with its development and use of the Products without any obligation to the Customer. As used in this Agreement, "*Intellectual Property*" means all worldwide patent, copyright, trademark, and trade secret rights, including (i) all applications and registrations relating thereto; (ii) all statutory protection obtained or obtainable thereon; and (iii) all claims or causes of action relating to, or arising out of, any of the foregoing, including without limitation, the right to sue for past, present and future infringements of any such rights. The breach of the Customer of its obligations under this Section would give rise to irreparable harm to PMI for which monetary damages would not be an adequate remedy. In the event of such breach, PMI shall, in addition to any and all other rights and remedies that may be available to PMI, be entitled to seek equitable relief, including but not limited a restraining order, injunction, specific performance and any other relief available at law or in equity, without the requirement to prove actual damages or post bond or other security.

**Limitation of Liability:** IN NO EVENT WILL (A) PMI'S AGGREGATE LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS EXCEED THE TOTAL AMOUNT PAID OR TO BE PAID UNDER THE INVOICE FROM WHICH SUCH LIABILITY AROSE, OR (B) PMI BE LIABLE FOR SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING

WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM INTERRUPTION OF BUSINESS, LOSS OF USE, LOSS OF PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE PRODUCTS, WHETHER OR NOT PMI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Force Majeure:** PMI will not be responsible for any delays in delivery which result from any circumstances beyond PMI's reasonable control, including without limitation, product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, general insurrection, acts of God or acts of any government or agency.

**Miscellaneous:** All notices provided in connection with these Terms will be in writing and delivered to the parties at the addresses set forth on the applicable PMI invoice. These Terms will be construed in accordance with, and governed by, the laws of the Commonwealth of Virginia, without regard to the conflict of law and choice of law rules of any jurisdiction. Any and all claims and disputes arising out of, or relating to, these Terms, or the performance or non-performance by either party of any of its obligations hereunder will be commenced and maintained only in a state or federal court of competent subject matter jurisdiction situated or located in Harrisonburg, Virginia. Each party consents to the exclusive personal jurisdiction of and venue in any such court. If any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumptions or burden of proof will arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. No waiver or failure by either party to exercise any option, right or privilege under these Terms on any occasion or occasions will be construed to be a waiver of the same on any other occasion or of any other option, right, or privilege. These Terms will be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in these Terms is intended, nor will be deemed, to confer any rights or remedies upon any entity or person not a party to this Agreement. These Terms and the applicable PMI invoice contain the entire agreement and understanding of the parties to this Agreement with respect to the transactions contemplated hereby; and these Terms and the applicable PMI invoice supersede all prior understandings and agreements of the parties with respect to the subject matter hereof. These Terms shall prevail over any of Customer's general terms and conditions, regardless of whether or when Customer has submitted such terms. In the event of a conflict between these Terms and any provisions contained in any Customer purchase order, confirmation, or other document issued by Customer, these Terms shall prevail. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms. These Terms can be amended or modified only by a written instrument signed by the parties or their successors in interest. Any termination, cancellation, or expiration of these Terms notwithstanding, provisions which are by their terms intended to survive and continue will so survive and continue, including without limitation the Sections entitled "Ownership and Proprietary Rights," "Disclaimer of Warranties," "Limitation of Liability" and "Governing Law."

**Power Monitors, Inc. 800 North Main St., Mt. Crawford, VA 22841 (800) 296-4120 Fax (540) 432-9430**