

**HERDSTAR TERMS AND CONDITIONS  
(PRODUCT AND SERVICES)**

**1. Purchase & Payment.** Pursuant to the terms of the applicable Purchase Order, Quote for Purchase, Order Acknowledgement or Service/Product Agreement (collectively "Agreement"), Customer agrees to purchase, and Herdstar agrees to deliver the Product or Services described in the Agreement to Customer. Except as defined herein, all capitalized terms shall have the meaning ascribed to them in the Agreement. Customer agrees to pay all sums specified in the Agreement or on any invoice on the due date specified therein, and all sums not paid on time will accrue a finance charge equal to fifteen percent (15%) per annum. Payment made by credit card will be subject to a standard convenience fee assessed by HerdStar.

**2. Product Terms and Conditions**

**A. Shipping.** All pricing and amounts payable hereunder are on a F.O.B. shipping basis from Herdstar's facility in Mankato, MN. Provided Customer is current in its payments under the payment schedule specified in the Agreement, and is otherwise in compliance with the terms and conditions hereof, Herdstar shall make the Product available for shipment to Customer according to the shipment schedule set forth in the Agreement. If requested by Customer, Herdstar shall arrange for transportation to Customer of such Product on Customer's behalf for a price equal to Herdstar's reasonable cost plus arrangement and handling fees, which amount shall be due and payable to Herdstar simultaneously with, and in addition to other payment due to Herdstar. If Customer does not request Herdstar arrange for transportation, Customer shall be solely responsible for arranging transportation and for all costs of transportation of Product to Customer from Herdstar's facility. Customer shall fully insure the Product being transported, in order to cover risk of loss or damage in transit, and Herdstar shall be named as an additional insured. Responsibility for loss or damage to the Product shall reside with Herdstar until such Product is picked up from Herdstar's manufacturing facility, at which point responsibility shall transfer to Customer.

**B. Herdstar Product Responsibilities.**

(a) Completion, Installation and Commissioning. Herdstar shall provide Customer's duly authorized engineering and construction contractor(s), agents and operational personnel with reasonable and general telephone call assistance not to exceed one total man hour, in an advisory capacity, regarding the Commissioning of the Product on-site at Customer's facility; provided however, Herdstar shall not be responsible for installing the Product on site at Customer's Facility. Customer assumes full responsibility for installation and start-up of the Product and for any loss or damage of whatever nature to persons or property, including all local laws and site condition permits. Customer shall pay for all reasonable costs of travel and lodging associated with Herdstar's assistance.

(b) Customer Delay. Herdstar shall not be liable for any delays directly or indirectly caused by Customer and/or its employees, contractors or vendors. Delay in delivery of Product shall not relieve Customer of its obligation to accept remaining deliveries unless: (i) Herdstar has failed to perform its material obligations under the Agreement; (ii) any material portion of the Product has not been made available for shipment within thirty (30) days of the last Shipment Schedule date. If Customer fails or refuses to accept delivery of any Product within four (4) days of the date that Herdstar and Customer have agreed for delivery of any Product (provided that such refusal or delay is not due to action or failure to act of Herdstar) then Herdstar may store the Product at Customer's expense and risk in a warehouse on Herdstar's (or its agent's) premises or at a location of Herdstar's choosing and Customer shall immediately pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices.

(c) Product Documentation. Herdstar shall provide Customer with an operating manual, if applicable, for the Product, which will reflect the technical and operating specifications of the Product, safety procedures and the warranty procedures set forth herein.

(d) Maintenance; Parts; Additional Services. After Commissioning of the Product, subject to the warranty provisions hereof, and if Customer requests Herdstar to provide technical or other assistance, and Herdstar agrees to provide such additional services not covered in the Purchase Price, then Customer shall pay Herdstar its then current rates per person on site, plus all reasonable travel (technician's hourly rate, plus airfare and maximum IRS allowed mileage for vehicle travel) and lodging and meal expenses, considering the local. All replacement parts and other costs incidental to Herdstar's provision of such services shall be billed separately according to Herdstar's standard, then current price lists, and such amounts shall be due & payable to Herdstar on a net 20 day basis.

(e) Product Warranty.

(i) Standard Warranty. Herdstar warrants to Customer that all Product shall be new, of good quality, in conformance with the terms of the Agreement and all legal requirements, and will be free from defects in material and workmanship for twelve (12) months from the date of shipment ("Standard Warranty"). Any refurbished parts, if available, carry a warranty that such parts shall be of good quality and free from defects in materials and workmanship for a period of ninety (90) days from shipment. All warranty claims must be submitted to Herdstar within fifteen (15) days of discovery of defects within the warranty period, or shall be deemed waived. Notwithstanding any contrary provision or agreement, Herdstar's sole responsibility hereunder shall be to furnish replacements for such defective products or parts without charge F.O.B. its factory. This Standard Warranty shall not apply to: (i) any Product that has been subject to misuse, misapplication, neglect (including but not limited to improper maintenance and storage), accident, improper installation, modification (including but not limited to use of unauthorized parts of attachments), adjustment or repair; or (ii) damage, loss, or diminution of or to any Product resulting from or related to normal wear and tear, or usage of wear parts. Identifiable items manufactured by others but installed in or affixed to Herdstar's Product are not warranted by Herdstar. To submit a warranty claim on parts, Customer must notify Herdstar in writing of the alleged warranty claim, obtain a return merchandise authorization ("RMA") from Herdstar, and return the part to Herdstar at Customer's expense within ten (10) days of issuance of the RMA. Herdstar will review the warranty claim, inspect the part, and notify Customer in writing of its findings. Notwithstanding any contrary provision or agreement, Herdstar's maximum liability for its Product, whether in contract, negligence, or strict liability in tort, is limited to the repair or replacement of the Product at issue, or the parts thereof.

(ii) Manufacturer Warranties. Herdstar warrants auxiliary equipment, accessories or parts manufactured by third-parties for or on behalf of Herdstar and supplied with the Product, to the extent of the warranty given by the original manufacturer thereof, and said manufacturer shall determine the extent of any allowance for, or repair or replacement of, or the timing and schedule of any repair or replacement of any such parts claimed to be defective. To the extent permitted, all such warranties shall be assigned to Customer or, where such assignment is impractical or impermissible, be exercised by Herdstar in the name of Customer, if permitted. Herdstar shall provide Customer on or before Commissioning with a list of equipment, accessories and parts manufactured by third-parties, and the nature of the warranty, if any, provided by such third-party. If an equipment manufacturer offers a warranty on selected equipment that extends beyond the warranty period provided by the Agreement, and if there is no charge for such warranty, the warranty shall be passed through to Customer.

(iii) Exclusions. In addition to the exclusions set forth above, the Standard Warranty is inapplicable to and excludes: (i) any defects as to workmanship and materials in any product, components or parts not manufactured by Herdstar or covered by the warranty of another manufacturer; (ii) damage caused by accident, misconduct, misuse, or the negligence of Customer or any party other than Herdstar, normal wear and tear, normal corrosion; (iii) damage caused by disasters such as fire, flood, wind, lightning (unless Customer has purchased lightning protection from Herdstar), electrical surge or power outage; (iv) damage caused by Customer's failure to follow all installation and operation instructions or manuals supplied by Herdstar or to provide normal maintenance; (v) damage caused by unauthorized or improper installation (other than by Herdstar) of attachments, repairs or modifications; (vi) damage caused by a product or component part which Herdstar did not design, manufacture, supply or repair; or (vii) any other abuse or misuse by Customer or any third-party that is not Herdstar. Herdstar further excludes corrosion of stainless steel or other metals normally used in the fabrication of the Product from its warranty. Herdstar is not liable for loss or damage due to: (a) corrosion from exposure to aggressive liquids or atmospheres; or (b) Customer's failure to properly clean or care for the Product.

(iv) DISCLAIMER. ALL WARRANTIES HEREIN ARE LIMITED WARRANTIES COVERING ONLY MATERIAL SUPPLIED BY HERDSTAR. EXCEPT FOR THE STANDARD WARRANTY SET FORTH IN SECTION 2(B)(e)(i) ABOVE, HERDSTAR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY (A) OF MERCHANTABILITY; (B) OF FITNESS FOR A PARTICULAR PURPOSE; (C) OF TITLE; OR (D) AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NO REPRESENTATIVE OF HERDSTAR HAS AUTHORITY TO WAIVE, ALTER, VARY OR ADD TO THE TERMS HEREOF WITHOUT PRIOR APPROVAL IN WRITING.

**C. Returns.** Except as provided in Section 2(C), all sales of Products are final. Customer may return a Product within 180 days of the date of the Agreement, on the following conditions: (i) any refunded purchase price may be subject to a restocking fee equal to 15% of the purchase price; (ii) credits shall be first applied to any outstanding balance of Customer owed to Herdstar; (iii) Customer shall arrange for and pay for shipping the returned Product to Herdstar; and (iv) the Product must be in new, undamaged, and unaltered condition, as determined by Herdstar.

### 3. Service Terms and Conditions.

**A. Excluded Services.** Services provided under the Agreement specifically exclude the following, which at Customer's option may be performed separately by Herdstar at Herdstar's then-current rates: (i) repairs or damage caused by Customer negligence or misuse of Services; (ii) repairs or damage attributable to the use of Services for other than the uses for which Services were designed; (iii) repairs required as a result of persons other than Herdstar's authorized representatives performing any maintenance, modification, or relocation of any equipment, accessories, custom or special products, modified units, or software necessary to Herdstar's performance of Services; (v) repair or damages to Customer's property (real or personal) necessitated by or related to accident, theft, unexpected loss, abuse, electrical power failure, flood, fire, lightning (unless Customer has purchased lightning protection from Herdstar), wind damage, or corrosive environments; (vi) repairs or service calls necessitated by complete or partial failure of transmission medium (such as telephone lines, computer networks, or the worldwide web) or for equipment malfunction caused by such transmission medium, or interference caused by third parties beyond the control of Herdstar; (vii) unless specified in the Agreement, power surges, liquids, repair or maintenance of a transmission line, antenna, tower, tower lighting, duplexes, combiner, or multicoupler; (viii) Customer initiated reprogramming of or interference with any equipment, accessories, custom or special products, modified units, or software necessary to Herdstar's performance of Services.

**B. Termination of Services.** Notwithstanding any contrary provision of the Agreement, Herdstar may terminate the Agreement for Services: (i) immediately upon an Event of Default; or (ii) for any reason and at any time upon thirty (30) days' prior written notice to Customer and refund of any Service Fee(s) paid to Herdstar for unperformed Services. Customer agrees to provide Herdstar written notice of any default of the Agreement to state the nature of the default. If Herdstar does not cure the default within thirty (30) days, Customer may terminate that portion of the Agreement that is in default by giving Herdstar thirty (30) days prior written notice.

**C. Disclaimer of Service Warranties.** HERDSTAR WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER CONSISTENT WITH INDUSTRY STANDARDS. EXCEPT FOR THE FOREGOING WARRANTY, HERDSTAR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY WARRANTY: (A) OF MERCHANTABILITY; (B) OF FITNESS FOR A PARTICULAR PURPOSE; (C) OF TITLE; OR (D) AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NO REPRESENTATIVE OF HERDSTAR HAS AUTHORITY TO WAIVE, ALTER, VARY OR ADD TO THE TERMS HEREOF WITHOUT PRIOR APPROVAL

IN WRITING.

**D. Third-Party Provider.** In providing Services to Customer, Herdstar may utilize wireless communication services of third-party providers. CUSTOMER AGREES THAT: (I) IT HAS NO CONTRACTUAL RELATIONSHIP WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS, AND (II) CUSTOMER IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN CUSTOMER AND THE UNDERLYING CARRIER.

**4. Limitation of Liability.**

(a) No Consequential or Indirect Damages. IN NO EVENT SHALL HERDSTAR OR ANY OF ITS OFFICERS, MANAGERS, GOVERNORS, OWNERS, SUCCESSORS OR ASSIGNS BE LIABLE UNDER THE AGREEMENT OR THESE TERMS AND CONDITIONS TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) Maximum Liability. WITHOUT LIMITING THE PROVISION OF SECTION 4(A) ABOVE, IN NO EVENT SHALL HERDSTAR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT OR THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED, WITH RESPECT TO: (i) PRODUCTS, THE TOTAL AMOUNT PAID TO HERDSTAR PURSUANT TO THE AGREEMENT; (ii) SERVICES, THE TOTAL AMOUNT PAID TO HERDSTAR PURSUANT TO THE AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR \$10,000.00, WHICHEVER IS LESS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF CUSTOMER'S REMEDIES UNDER THE AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. The prior sentence limiting liability and damages is a material part of the Agreement, and Herdstar would not have sold the Product or provided Services on terms as favorable to Customer as set forth in the Agreement without Customer's agreement to limit Herdstar's liability as provided above.

(c) EXCLUSIVE REMEDY. CUSTOMER'S SOLE REMEDY WITH RESPECT TO PRODUCTS SHALL BE THE STANDARD WARRANTY, AND HERDSTAR'S SOLE LIABILITY SHALL BE COMPLIANCE WITH THE STANDARD WARRANTY.

**5. Indemnifications.** Customer shall indemnify, defend and hold harmless Herdstar, its officers, governors, agents, successors and assigns (collectively, "Indemnified Party") against any losses, damages, liabilities, claims, actions, judgments, settlements, awards, costs, or expenses of whatever kind, including reasonable attorneys' fees, incurred by Indemnified Party or awarded against Indemnified Party, arising out of any claim alleging: (i) breach or non-fulfillment of any representation, warranty or covenant under the Agreement by Customer, its employees or agents; or (ii) any negligent or more culpable act or omission of Customer, its employees or agents in connection with the performance of its obligations under the Agreement.

**6. Confidential Information & Intellectual Property.** In addition to any confidentiality and/or non-disclosure agreement between the Parties, Customer agrees that the processes and/or equipment purchased from Herdstar include valuable intellectual property, including but not limited to, patentable and unpatentable inventions, know how, confidential information and/or valuable Trade Secrets of Herdstar (collectively, "Herdstar IP"). As used herein, "Trade Secrets" means all confidential and proprietary information disclosed by one Party to the other relating to the whole or any portion or phase of any scientific, technical or non-technical data, design, process, formula, device, method, technique, compilation, program, software, drawing, plans, component list, or operating manuals relating to the Product. Under the terms and conditions hereof, and except as otherwise limited herein, Herdstar grants to Customer a royalty-free, limited, non-exclusive license to Customer to use the Herdstar IP limited to use by Customer of the Product or Services, and for no other purpose. Customer agrees by acceptance of Product and Service, that it shall keep confidential the Herdstar IP as specified herein and use its commercially reasonable efforts to protect the Herdstar IP unless Herdstar notifies Customer in writing or a court determines (from which an appeal may not be taken) that such information is no longer confidential or a Trade Secret. The grant of this license to Customer shall continue to remain in full force and effect for so long as Customer continues to: (i) use the Product or subscribes to the Services; and (ii) remains in compliance with the terms of the Agreement.

(a) No Sub-Licensing. Customer agrees that it shall not assign, sub-license, or in any way transfer Customer's license to the Herdstar IP granted hereunder without the express, written approval of Herdstar.

(b) No Modifications. Other than in connection with the installation, repair, and Commissioning of the Product, Customer shall not modify any Product or processes purchased from Herdstar without the express, written approval of Herdstar, which Herdstar may withhold at its sole discretion. Whether or not Herdstar allows any modification of equipment, the Product or process, any and all such modification to equipment, the Product and/or process, regardless whether made by Customer or jointly with Herdstar or a third-party, shall become the intellectual property of Herdstar and, except with respects to such licensing and royalty-free rights and interests granted hereunder, Customer hereby assigns all its right, title and interest in and to such modifications to Herdstar and agrees to cooperate with Herdstar to execute all documents and take such actions as are necessary to evidence the transfer. This cooperation provision shall survive any termination or expiration of the Agreement.

(c) No Replication and Reverse Engineering. Customer shall not directly or indirectly attempt to replicate or reverse engineer (or assist any third-party in replicating or reverse engineering) any software, electronics, process or the Product or equipment purchased from Herdstar and that it shall not seek to produce (or assist any third-party in producing) any similar or competing equipment or process that is based in whole or part on the Product or Services or processes or based on concepts embodied in the Product, Services or equipment

or processes utilized by Herdstar.

(d) **Survival.** This Section 6 shall survive for as long as Customer, and/or any successor in interest, owns and/or operates the Product, or subscribes or utilizes any Services, plus five (5) years thereafter and five (5) years after any permitted transfer of ownership or complete cessation of operation.

(e) **Equitable Relief.** Customer agrees that any breach of the terms of Section 6 may give rise to irreparable harm for which money damages would not be an adequate remedy, and accordingly agrees that Herdstar shall be entitled to enforce the terms of Section 6 by a decree of specific performance without the necessity of proving the inadequacy as a remedy of money damages. If specific performance is elected as a remedy, such remedy shall be in addition to any other remedies available at law or equity.

**7. Force Majeure.** If Herdstar is unable to perform its obligations under the Agreement because of natural disaster, fire, strike, lightning, lockout, inability to obtain materials, delays of carriers or suppliers, action or decrees of governmental bodies or communication line failure not the fault of Herdstar or like events, Herdstar shall give notice to Customer and shall take reasonable efforts to resume performance. Upon receipt of such notice all obligations under the Agreement shall be suspended, all time periods automatically extended, and any applicable fees due abated for the period applicable to such force majeure.

**8. Default.** An event of default ("**Event of Default**") under the Agreement or these Terms and Conditions shall occur upon the occurrence of all or any one of the following events: (i) Customer does not pay any amount due to Herdstar under the Agreement; (ii) Customer ceases doing business as a going concern; (iii) Customer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; (iv) Customer files, or has filed against it, a petition in bankruptcy or for its reorganization, arrangement, composition or readjustment under any state insolvency law or Customer liquidates all or a substantial part of its assets not in the ordinary course of its business, dissolves or takes other similar action; or (v) Customer shall default in the performance of any of its obligations to Herdstar arising under the Agreement, these Terms and Conditions, or any other agreement between Customer and Herdstar and such default is not cured within fifteen (15) days of Herdstar providing notice of same.

**9. Remedies.** Upon the occurrence of any Event of Default, Herdstar may at its option and without notice or demand, exercise all or any one of the following remedies: (i) declare immediately due and payable all invoices and all other sums due or to become due under the Agreement and any other agreement between Customer and Herdstar, together attorneys' fees, court costs, other costs of collection and all applicable termination fees; (ii) terminate all of its obligations arising under the Agreement; or (iii) exercise all other legal and equitable remedies which Herdstar may have. The foregoing remedies shall be deemed cumulative and may be exercised successively or concurrently. Customer agrees to pay all of Herdstar's costs and expenses incurred in enforcement of the Agreement, including all attorney's fees and court costs.

**10. Assignment.** Herdstar may in its sole discretion and without notice to or the consent of Customer, assign Herdstar's rights and obligations under the Agreement, and may subcontract any portion of Herdstar's performance of the Agreement to a third-party. Customer may not assign the Agreement or otherwise transfer its rights or obligations under the Agreement to any third-party without the prior written consent of Herdstar.

**11. Governing Law; Venue.** The validity, construction and performance of the Agreement and these Terms and Conditions shall be governed by and construed in accordance with the law of the state of Minnesota, U.S.A., without reference to any choice of law principals thereof, but the specific performance provisions and right of Herdstar to seek injunctive relief for Customer's breach of the covenants contained herein may also be enforced in any other state or country or nation wherever such breach occurs, and in accordance with the laws of such other state, country or nation, to the extent necessary to secure enforcement in such other jurisdiction. Each party: (i) agrees that all actions, claims or proceedings related to the Agreement and these Terms and Conditions shall be commenced and maintained exclusively in the State of Minnesota; and (ii) irrevocably consents to submit to the personal jurisdiction and venue of such Minnesota courts and waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue in any such court or that any such proceeding which is brought in accordance with this Section has been brought in an inconvenient forum.

**12. General.** The following sections of the Terms and Conditions shall survive termination or expiration of the Agreement: 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12. No waiver by either Party of any right under, or breach of, any provision of the Agreement shall be construed as a waiver of any continuing or succeeding breach of such provision or right. The Agreement (including these Terms and Conditions): (i) are binding on and inure to the benefit of Herdstar and Customer and their respective successors or assigns; and (ii) constitute the entire agreement of the Parties with respect to the subject matter of the Agreement, superseding all prior agreements, communications and understandings, oral or written. A determination that any provision of the Agreement is invalid or unenforceable shall not affect the other provisions of the Agreement. The Agreement may not be amended or modified except by a written agreement signed by both Parties. In the event of a conflict between the main body of the Agreement and these Terms and Conditions, these Terms and Conditions will take precedence, and shall supersede and be controlling over the Agreement. By accepting delivery of the Products or Services, Customer is also agreeing to these Terms and Conditions. Except for the money due upon an open account, no action may be brought for any breach of the Agreement or these Terms and Conditions more than one (1) year after the accrual of such cause of action.