

General Terms and Conditions (US version)

Logistics

1. Performance

1.1. ALL THE PROVISIONS OF THESE TERMS AND CONDITIONS (“**TERMS**”) SHALL APPLY BETWEEN PTV LOGISTICS US, INC. (“**PTV**”) AND CUSTOMER (COLLECTIVELY, THE “**PARTIES**”), EXCEPT WHERE EXPLICITLY AGREED OTHERWISE IN WRITING BY BOTH PARTIES. THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON BOTH PARTIES UNLESS EXPRESSLY ACCEPTED BY BOTH PARTIES IN WRITING. IN THE EVENT OF ANY POSSIBLE CONFLICTS BETWEEN THESE TERMS AND AN AGREEMENT OR AN ORDER FORM (“**ORDER FORM**”) THAT IS ACCEPTED BY BOTH PARTIES IN WRITING, THE PROVISIONS SET FORTH IN THE AGREEMENT OR THE ORDER FORM SHALL PREVAIL. ANY AGREED UPON ORDER FORM, STATEMENT OF WORK OR OTHER AGREEMENT TO PROVIDE A SPECIFIC SYSTEM, SOFTWARE, OR SERVICES AS DEFINED BELOW IN THIS SECTION 1.1, TOGETHER WITH THESE TERMS, SHALL EXCLUSIVELY GOVERN THE PARTIES’ OBLIGATIONS.

Except for Online Services as described in Section 1.2. the following items shall be governed by these Terms:

- Delivery of Software, Data, or Documentation (“**Licensed Materials**”);
 - Services related to Installation, Configuration and Customization of Licensed Materials;
 - Consulting Services; and
 - Maintenance and Support Services
 - (collectively, all of the foregoing services hereinafter referred to as the “**Services**”).
- 1.2. These Terms shall not apply with respect to any online services such as the provision of websites and internet portals, application services providing and/or software-as-a-service (collectively “**Online Services**”). Regarding any Online Services, the terms of use agreed upon registration by Customer related to such Online Services shall apply and govern such Online Services.
- 1.3. Furthermore, these Terms shall not apply with respect to any contractual agreements where PTV is the purchaser of goods or services. Regarding such agreements, only the General Procurement Terms and Conditions of PTV or other individual contractual arrangements between PTV and the applicable provider shall apply.
- 1.4. Statements and/or representations contained in any test programs, product and project descriptions shall not be considered guarantees or warranties with respect to the quality of any Services or Licensed Materials provided by PTV. Any guarantee or warranty shall require the express and written confirmation of PTV. Samples, descriptions, representations, and other information contained in PTV catalogues, advertisements, or other promotional materials or statements or representations made by PTV’s employees or sales representatives are for general informational purposes only and are not binding upon PTV.
- 1.5. The terms and conditions for Maintenance and Support services offered by PTV for the Licensed Materials are set forth in the applicable Maintenance Terms as amended from time to time.

2. Intellectual Property and Ownership

- 2.1. Any Licensed Materials shall at all times remain PTV's sole property and shall be subject to copyright protection and may be protected by further intellectual property rights. Between the Parties, PTV or its licensors shall exclusively own and retain title to and ownership of all intellectual property rights in the Licensed Materials. PTV does not transfer any portion of such title and ownership, or any of the associated goodwill to Customer. All rights which are not expressly granted are reserved.
- 2.2. The Customer shall be provided with a non-exclusive license to utilize the Licensed Materials as described in the applicable End User License Agreement ("EULA") as amended from time to time.
- 2.3. The Customer agrees to take all reasonable steps to protect the Licensed Materials and Services from unauthorized copying or use, and further agrees to promptly report any instances of suspected copyright and/or other intellectual property infringement to PTV, and to provide PTV with reasonable assistance, at PTV's expense, in investigating and prosecuting any such infringement.

3. Customer's Cooperation

- 3.1. The Customer shall reasonably cooperate, assist, and provide PTV with any necessary support in connection with the performance of PTV's duties and obligations hereunder. Customer shall make available the hardware, operating system and basic software and provide telecommunications facilities and the required number of staff. Customer shall also provide PTV, in a timely fashion, with any and all information required for the performance of its duties and obligations hereunder. Insofar as it is useful or necessary for the performance of PTV's duties and obligations, Customer shall grant PTV access to the Customer's business premises during normal business hours.
- 3.2. If applicable, Customer shall establish a remote access for PTV on any of its information technology (IT) systems for which PTV is providing any Services for or needs to have access to perform its duties and obligations hereunder.
- 3.3. Customer shall take appropriate precautions if any Licensed Materials fail to properly operate, in part or as a whole, by performing regular data backups, conducting constant failure diagnosis and inspection, etc. Customer shall perform a full backup of its data before installing any Licensed Materials on its IT systems.

4. Deliveries and Delay

- 4.1. Any dates provided by PTV with regard to any delivery times shall be non-binding, unless expressly stipulated by PTV as legally binding dates. Partial deliveries shall be permissible if Customer is able to make reasonable use thereof. PTV shall not be liable for any delay in performance, or in the delivery or shipment of Licensed Materials, for any such non-binding or delayed deliveries, or for any damages suffered by Customer by reason of such delay. PTV may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any outstanding amounts owed, adequate to PTV in its discretion, of Customer's ability to pay. Failure to provide such assurances shall entitle PTV to terminate these Terms without further liability or obligation to Customer.

- 4.2. Periods of delivery shall be extended by the period in which PTV is prevented, for reasons beyond its control, from providing the contractually agreed services including but not limited to, due to any labor disputes, any acts of God, terrorist acts, hacking attempts, or any other unusual and unforeseeable events (collectively "Force Majeure Events"), as well as an appropriate period for restarting after the end of such Force Majeure Event. If a Force Majeure Event lasts for more than three (3) months, either Party shall have the right to cancel any pending Order Form, or, if the respective Order Form constitutes continuing obligations, terminate the underlying agreement. In such case, any prepaid compensation shall be repaid, on a pro rata basis, in accordance with applicable statutory provisions.
- 4.3. Periods of delivery shall be extended by the period PTV is being delayed in its performance due to, or resulting from, a lack of Customer's information or cooperation, in addition by an appropriate period for restarting after the end of Customer's delay.
- 4.4. Any reminders for legally binding time limits agreed upon by the Parties shall be made in writing. In the event that PTV is in default with respect to a delivery, Customer shall notify PTV of such default with reasonable details, and shall be entitled to terminate the applicable Order only in the event that PTV does not, or is unable to, cure such default within thirty (30) days following such written notice from Customer.

5. Payment, Retention of Rights

- 5.1. Unless stipulated otherwise on PTV's invoices, payments shall be due within thirty (30) days of the date of PTV's invoice.
- 5.2. All late payments of invoices by Customer shall bear interest at a rate of one percent (1%) per month during which any sums under such invoices were owed and unpaid, or the highest rate allowed by law, whichever is lower. Following a period of ten (10) days from the date on which Customer is notified that it has late payments due that exceed the payment terms defined in Section 5.1 and for which said sums are owed and unpaid, the obligation of PTV to perform under this Agreement may, at the sole option of PTV, be suspended, including but not limited to, disabling Customer's access to the Licensed Materials or suspending Services until receipt of payment in full. Upon expiration of the aforesaid ten-day cure period without payment, no further notice or obligation to Customer is required. Any failure of Customer to make payment of any payment invoice in the manner described in this Section 5 shall be deemed a material breach of this Agreement by Customer.
- 5.3. Title to any of the Licensed Materials and any rights under Section 2 hereof or under an EULA (if applicable) shall not pass to Customer before full payment of any fees due is made by Customer.
- 5.4. In case of any termination of Customer's rights pursuant to Section 2 hereof or an EULA, PTV may require that the Customer return any Licensed Materials provided or, if they cannot be returned, that the Licensed Materials be irreversibly deleted or destroyed. In the latter case, Customer shall provide PTV with a written certification to that effect.

6. Intellectual Property Indemnity

- 6.1. Customer shall be solely responsible for proper selection, application, and use of the Licensed Materials and Services, as well as the incorporation/integration of the Licensed Materials into other Customer equipment or systems. Customer shall indemnify and hold harmless from and against any and all damages, liabilities, claims, or expenses (including reasonable attorneys' fees and expenses) arising out of or relating to: (a) improper selection, application, installation, use or incorporation/integration of the Licensed Materials and/or Services; (b) infringement of any patent, trademark, copyright or other third party interest arising out of PTV's compliance with any of Customer's designs, specifications, or instructions; or (c) violation of any applicable laws or regulations, including but not limited to, U.S. Export Controls laws. Upon PTV's prompt written request, Customer shall defend PTV, at its expense, in any such suit or action brought against PTV.
- 6.2. Subject to this Section 6, PTV agrees, at its own expense, to pay all Damages (as defined below) and defend Customer from (or at PTV's option, settle) any claim instituted by a third party and asserted against Customer that the Licensed Materials when used in accordance with the applicable Documentation, or the Services (if any), infringe any patent, copyright, trade secret or other proprietary right of a third party (an "IP Claim"), provided that Customer: (a) promptly notifies PTV in writing of any such IP Claim; (b) gives PTV sole control over the investigation, preparation, defense and settlement of the IP Claim; and (c) assists and fully cooperates with PTV in the defense of same. PTV agrees to pay any damages awarded by a court of competent jurisdiction against Customer (or agreed to in a settlement by PTV) resulting from the IP Claim, including any awarded costs and awarded reasonable attorneys' fees (collectively, "Damages"). PTV will not be responsible for any settlement (and the associated Damages agreed to in such settlement) that it does not approve in writing prior to such settlement.
- 6.3. In no event will PTV have any obligations under this Section 6 or any liability for any IP Claim if the IP Claim is caused by, or results from: (i) Customer's combination or use of the Licensed Materials or Services with non-PTV software or services, or any equipment, data or other materials, if such IP Claim would have been avoided absent such combination or use; (ii) modification of the Licensed Materials or Services by anyone other than PTV if such IP Claim would have been avoided by use of the unmodified Licensed Materials or Services; (iii) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement; (iv) Customer's use of the Licensed Materials or Services in a manner not strictly in accordance with the applicable Terms or agreement; (v) PTV's modification of the Licensed Materials or Services in compliance with Customer's specifications or directions; (vi) use of other than PTV's most current release of the Licensed Materials if the IP Claim would have been avoided by use of the most current release, provided Customer is given an opportunity to use such most current release for no additional fee; or (vii) any related breach by Customer of any provision under these Terms or any underlying agreement hereunder.
- 6.4. **THIS SECTION 6 STATES PTV'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

7. Limited Warranty/Disclaimer/Limitation of Liability

- 7.1. PTV warrants that at the time of delivery of the Licensed Materials to Customer they will materially conform to PTV's applicable Documentation. This limited warranty shall expire upon one (1) year after delivery of the Licensed Materials to Customer. The Licensed Materials and each deliverable under the Services (a "**Deliverable**") shall be deemed accepted after a period of fourteen (14) days following delivery of the Licensed Materials or respective Deliverable (which shall be defined as "**Acceptance**"). As Customer's exclusive remedy, PTV will use its commercially reasonable best efforts to either repair or replace any Deliverable or Licensed Materials found by PTV to have been materially nonconforming at the time of delivery, if Customer, promptly (however not later than ten (10) days after Customer's discovery of the non-conformity) sets forth in writing to PTV information describing in reasonable detail the alleged defect in the Deliverable or Licensed Materials, and such allegedly non-conforming Deliverable is returned and received by PTV within the above-mentioned warranty period. No employee or sales representative of PTV shall have any authority whatsoever to establish, expand or otherwise modify PTV's warranty herein. This limited warranty does not cover normal maintenance, nor misuse, abuse, unauthorized repair or alteration, lack of proper maintenance or damage caused by natural causes such as fire, storm, or flood. PTV shall not be liable for transportation, labor or other charges for adjustments, repairs, replacements of parts, installation, or other work which may be done upon or in connection with the Licensed Materials or the EULA. This warranty shall not be deemed to have failed of its essential purpose so long as PTV is willing and able to repair, replace or refund the purchase price on any defective Licensed Materials or Deliverable in the manner specified. No allowance will be made for repairs made by Customer. Except as herein provided, PTV shall not be liable to Customer in any manner with respect to the Licensed Materials or Services:
- 7.2. THE FOREGOING LIMITED WARRANTIES ARE THE ONLY WARRANTIES MADE BY PTV WITH RESPECT TO THE LICENSED MATERIALS AND THE SERVICES, EXCEPT THAT PTV AGREES TO PASS THROUGH ANY WARRANTIES EXTENDED FOR THIRD-PARTY PRODUCTS INCORPORATED INTO THE LICENSED MATERIALS OR SERVICES, IF ANY. PTV MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTY WITH RESPECT TO THE LICENSED MATERIALS OR SERVICES, EXPRESS OR IMPLIED, AND PTV DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEMS INTEGRATION. NO WARRANTY IS MADE REGARDING THE RESULTS OBTAINED BY THE USE OF THE LICENSED MATERIALS OR SERVICES, THAT ALL ERRORS IN THE LICENSED MATERIALS WILL BE CORRECTED, OR THAT THE LICENSED MATERIALS OR SERVICES FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS. PTV SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THESE TERMS FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF PTV FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE LICENSED MATERIALS OR SOFTWARE. NO ACTION OR PROCEEDINGS UNDER THESE TERMS, REGARDLESS OF FORM, MAY BE COMMENCED BY

CUSTOMER MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES.

- 7.3. CUSTOMER ASSUMES ALL RESPONSIBILITIES AND OBLIGATIONS WITH RESPECT TO ANY DECISIONS MADE OR ADVICE GIVEN AS A RESULT OF THE USE OF THE LICENSED MATERIALS OR SERVICES, AND FOR THE SELECTION OF THE LICENSED MATERIALS OR SERVICES TO ACHIEVE CUSTOMER'S INTENDED RESULTS. CUSTOMER AGREES THAT PTV'S TOTAL LIABILITY IN CONNECTION WITH THE LICENSED MATERIALS OR SERVICES WHETHER ARISING IN CONTRACT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY IN TORT OR WARRANTY, OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO PTV FOR THE NON-CONFORMING LICENSED MATERIALS OR SERVICES. CUSTOMER AGREES TO ASSUME THE RISK FOR: (A) ALL LIABILITIES DISCLAIMED BY PTV CONTAINED HEREIN AND (B) ALL ALLEGED DAMAGES IN EXCESS OF THE AMOUNT OF THE REMEDY PROVIDED HEREUNDER. THE ESSENTIAL PURPOSE OF THE LIMITED REMEDY PROVIDED CUSTOMER HEREUNDER IS TO ALLOCATE THE RISKS AS PROVIDED ABOVE.

8. Confidentiality, Non-Solicitation

- 8.1. All Confidential Information (as defined below in Section 8.2) of both Parties is and shall remain the sole and exclusive property of the disclosing party and is to be treated by the receiving party as absolutely secret and confidential. Both Parties covenant and warrant that, without limitation as to time, they shall keep in confidence, maintaining proper security therefore, and shall not (i) use or allow to be used for their own benefit or for any purposes other than the performance of this Agreement, or (ii) disclose or reveal or allow to be disclosed or revealed to any person other than either party any Confidential Information of the disclosing party. Without limiting the foregoing, (i) neither Party shall negotiate with or offer or agree to sell, lease or otherwise transfer to any person or entity any Confidential Information of the disclosing party or any system, data, report, study, program or other item which incorporates or utilizes such Confidential Information, and (ii) either party's name, logo, insignia, photographs or any other publicity pertaining to this Agreement, including but not limited to the existence of these Terms, shall not be used in any magazine, trade paper, newspaper or other medium, or otherwise disclosed to any person, without the prior written consent of both Parties. Neither Party shall disclose the subject matter, existence or terms and conditions of these Terms or the granting of the license hereunder, except as may be required by law or government regulations or pursuant to a court order or in any legal proceeding, or as may be necessary to assert rights under these Terms, or as may be authorized in writing by both Parties.
- 8.2. As used herein, the term "**Confidential Information**" means any confidential or proprietary information of the disclosing party, including but not limited to designs, drawings, plans, formulae, instructions, processes, programs, systems, theories, specifications, techniques, tapes, disks, disk racks, models, data, flow charts, documentation, processes, procedures, know-how, new product or technology information, prototypes, software (whether in object code or source code), manufacturing, development, or marketing techniques, development or marketing timetables, business strategies and development plans, supplier information,

personnel information, PTV's information, pricing policies, financial information and any other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secret or non-public business information.

- 8.3. PTV and Customer each agree that, for so long as PTV is rendering Services for Customer and for one (1) year thereafter, neither Party nor its officers, directors, employees, subsidiaries, affiliates or agencies (or any third party on its behalf) shall, without the express prior written consent of the other Party, directly or indirectly employ, solicit the employment of, or (independent of the companies' relationship with one another) engage or seek to engage as a consultant or independent contractor the services of any of the other's officers, directors, employees, agents or subcontractors.

9. Dispute Resolution

- 9.1. Except as provided in Section 9.3 below (Litigation Rights), in the event the Parties are unable to resolve any material dispute regarding any matter related to these Terms or the performance hereunder, the Parties shall attempt to resolve such matter by sending a written notice to the other, and each Party shall cause its chief executive officer or other delegate with decision-making authority to communicate regarding the substantive (rather than procedural) matters in dispute, or meet, with the other Party in order to discuss and attempt in good faith to reach agreement on the matter(s) in question. If the Parties, within fourteen (14) days of their initial meeting or substantive (rather than procedural) communication, or after such other longer period as the Parties may agree upon in writing, are unable to reach agreement on such matter(s) to the reasonable satisfaction of both Parties, either party may request in writing that the Parties initiate non-binding mediation hereunder (a "Mediation Request"). The Party receiving the Mediation Request shall have twenty (20) days from the date on which the Mediation Request is received to deliver to the other Party a written response indicating whether it accepts or declines the Mediation Request; provided that failure to respond to a timely Mediation Request within such 20-day period shall be deemed to be a refusal of the Mediation Request. Upon acceptance of a Mediation Request, the Parties shall promptly commence the mediation proceeding in accordance with this Section 9.1. In connection with any mediation hereunder, the mediator shall be jointly appointed by the Parties and the mediation shall be conducted by JAMS in the city of Arlington, Virginia, USA, unless otherwise agreed by the Parties. No Party shall be obligated to attend mediation proceedings for more than two (2) days. The mediator shall deliver his or her non-binding settlement proposal to the Parties within fifteen (15) days of his or her appointment. For the avoidance of doubt both Parties expressly acknowledge that it is in the sole discretion of either Party to accept or to decline a mediator's settlement proposal. The costs and fees of the mediation shall be shared equally by the Parties. All mediation pursuant to this Section 9.1 shall be treated as settlement and compromise negotiations.
- 9.2. If the Parties, within thirty (30) days of their initial meeting or substantive (rather than procedural) communication, or after such other longer period as the Parties may agree upon in writing, are unable to reach agreement, and either (a) a Mediation Request has not been timely delivered in accordance with Section 9.1 (b) a Mediation Request has been delivered in accordance with Section 9.1, but the Party receiving such Mediation Request has not accepted such Mediation Request, or (c) a

Mediation Request has been delivered and accepted, but the Parties have been unable to resolve the dispute within ten (10) days of the rendering of the mediator’s non-binding settlement proposal, then either Party may proceed with litigation in accordance with the procedures established in Sections 9.3 and 9.4 below.

9.3. Either Party may, without waiving any remedy under this Agreement, seek temporary or permanent injunctive relief to protect its Confidential Information, non-solicitation, and intellectual property rights, regardless of the mediation requirements. THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO THESE TERMS, OR ANY OTHER AGREEMENT BETWEEN THE PARTIES.

9.4. These Terms shall be governed by, construed in accordance with, and subject to, the laws of the Commonwealth of Virginia, without regard to its conflict of laws principles. In the event of a dispute or claim arising under these Terms that is not otherwise resolved, the Parties expressly agree to the sole, exclusive and personal jurisdiction and venue of the federal or state courts located in Arlington County, Virginia, USA. The prevailing party in any such dispute and/or proceeding shall be entitled to recover its costs and expenses incurred (including reasonable attorneys' fees and expenses) in any such dispute or proceeding. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

10. Notices

Simple electronic form (email or fax) shall be sufficient to satisfy any requirement for written form stipulated in these Terms; however; this shall not apply to any notice of termination, which shall require delivery of an original document signed by the respective party, and sent by certified mail, return receipt requested.

11. Assignment; Amendment; Waiver

Customer may not assign these Terms or any EULA, in whole or in part, or any claims against PTV to any third parties, unless PTV provides prior written consent, and any attempted transfer, assignment or delegation without such consent will be void and without effect. Any modifications or amendments to these Terms shall only be valid and enforceable if made in writing and signed by duly authorized representatives of both Parties. This provision shall also apply to any waiver of any contractual obligation hereunder.

Shorttitle	General Terms and Conditions - US - Logistics
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