

**LIMITATION OF DAMAGES.** If Buyer makes a valid and timely claim under the LIMITED WARRANTY section, above, Seller's liability and Buyer's remedies under these Terms shall be limited solely to the remedies described in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE SALE OR USE OF THE PRODUCTS, WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, AND THE LIABILITY OF SELLER IN CONNECTION WITH SUCH SALE OR USE OF ANY PRODUCTS SHALL NOT EXCEED THE PRICE OF THE PRODUCTS ON WHICH SUCH LIABILITY IS BASED. DAMAGES LIMITED BY THIS SECTION INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE OF THE PRODUCTS OR ANY HARDWARE SYSTEM ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT EQUIPMENT, FACILITIES OR SERVICES, DOWN TIME, BUYER'S TIME, CLAIMS OF THIRD PARTIES, INCLUDING BUYERS, INJURY TO PERSONS OR PROPERTY, AND PAIN AND SUFFERING OF ANY KIND.

**INTEREST AND FEES.** In the event of any dispute arising out of the Order, these Terms or the transaction described therein, in addition to an award of damages, the Seller shall be entitled to recover: (a) pre-judgment interest on any amount awarded at a rate of 1 ½ % per month, (b) all expenses of arbitration and litigation, including without limitation all fees and court costs; and (c) all attorney's fees and costs incurred regardless of whether such fees or expenses are incurred before or after the initiation of arbitration or litigation.

**INTELLECTUAL PROPERTY OWNERSHIP.** Seller shall retain all rights, title and interest in and to any and all patents, copyrights, trademarks and other intellectual property and proprietary rights and the goodwill associated thereby pertaining to the Products, as well as any associated developments Seller creates, realizes or reduces to practice during Seller's fulfillment of the Order. Except as otherwise particularly provided, no license, transfer or assignment of proprietary rights shall occur as a result of these Terms. Any nameplates or other form of identification which Seller has affixed to or marked upon any of the Products may not be removed or altered by Buyer without Seller's written consent.

**INDEMNIFICATION; SPECIAL ORDERS.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's successors, assigns and customers from and against claim or cause of action alleging that the design, use or construction of the Products infringes a patent or any proprietary rights of others, provided that such infringement does not result from (a) Buyer's modification of the Products; (b) unauthorized use of the Products; (c) incorporation of the Products into another product or use of such goods with another product; or (d) a specification, design, modification or drawing provided to Seller by Buyer. Buyer shall defend, indemnify and hold harmless Seller and Seller's successors, assigns and customers from any claim or cause of action arising from subparts (a) through (d) of this Section. Seller shall have the right to employ, at Buyer's expense, counsel on Seller's own behalf and shall have the right to participate in the defense of such suit. In the event of a claim giving rise to Seller's indemnification obligation hereunder, Buyer shall give Seller immediate notice in writing of any claim or institution or threat of suit, permit Seller to defend or settle the same, and provide Seller with reasonable assistance in such defense or settlement.

**FORCE MAJEURE.** Seller shall not be liable if it is unable to perform any of its obligations contained in these terms and conditions due to, directly or indirectly, the failure of Seller's supplier to deliver as promised; sabotage; failure or delays in transportation, utility service or communication systems; any labor or industrial dispute; shortages of labor, fuel, supplies or equipment; war; flood; explosion; natural disaster or terrorism; or any other event beyond the control of Seller.

**GOVERNING LAW; ARBITRATION.** The sale of Products by Seller to Buyer shall be governed by the laws of the State of Minnesota, without regard to its conflict of law provisions. The 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply. In the event of any controversy or claim arising out of or relating to this transaction, the parties agree to binding arbitration in Hennepin County, Minnesota pursuant to the then-current Commercial Arbitration Rules of the American Arbitration Association except as such rules may contemplate state court jurisdiction. The matter shall be heard by a single arbitrator and the award of the arbitrator shall be final and binding upon the parties and judgment thereon may be entered in a state or federal court sitting in Hennepin County, Minnesota, United States of America. The arbitrator will not have the authority or power to amend or modify these Terms, nor to fashion any relief or remedy that would have the effect of modifying or amending these Terms or of creating additional rights or obligations. The arbitrator will have no power or authority to award punitive or exemplary damages.

**EXPORT CONTROL.** Products purchased or received under these terms and conditions shall be subject to export laws and regulations of the United States of America, and Buyer agrees to comply with such export laws and regulations.

**SECURITY INTEREST.** Seller reserves a purchase money security interest in all Products and any proceeds thereof until any and all payments and charges are paid in full. Buyer shall reasonably assist Seller in perfecting such security interest.

**NO ASSIGNMENT.** Buyer may not assign its rights or obligations under these terms and conditions without the express written consent of Seller.

**NOTICES.** All notices required to be given under these Terms shall be given in writing and shall be either (a) personally delivered or sent by first class mail, postage prepaid, to the party to whom the notice is to be given at the address shown upon the Order, or (b) sent electronically by fax or through the Internet. If notice is sent by mail, it shall be deemed effective the second business day after deposit in the United States mail. If notice is sent electronically, it shall be deemed effect when sent. Any party may change its address for notices by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address.

**SEVERABILITY.** If any provisions of these Terms shall be held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not be affected or impaired thereby.

**WAIVER.** Any waiver of compliance with the Terms must be in a writing executed by both parties. No such waiver by Seller shall be deemed a waiver of any other term or condition herein nor shall any such waiver apply to any instance other than that to which the waiver is particularly directed.

**SELLER.** For the purposes of these Terms, "Seller" means Northwire, Inc. and NWI Lab360 and any of its successors and assigns and any surviving, resulting, or transferee corporation, partnership, or other business entity, or any one or more of them, and, for the purposes of indemnification by Buyer, assessment of damages against Buyer, or relief from liability for damages to Buyer, shall in addition to the foregoing be deemed to also include all of Seller's affiliates and subsidiaries, and any of their respective equity holders, directors, officers, employees, agents and sales representatives, unless and only to the extent that the context clearly indicates otherwise.

**QUESTIONS.** For any questions regarding Buyer's Order, Seller can be reached toll free at 800.468.1516 and international at + 1 715.294.2121.