Synective Systems Inc - Terms of Sale

1. CONTRACT FORMATION

1.1. The Buyer shall purchase software, equipment, hardware and services (Products) by issuing their standard purchase order to Synectics, however the terms and conditions of this document will supersede all other terms and conditions either written or oral. The purchase order shall:

1.1.1. be signed by an authorized representative of the Buyer;

1.1.2. acknowledge and agree to the terms contained in this Contract;

1.1.3. refer to any quotation or statement of work produced by Synectics, indicating specific products and services, quantities, part numbers, unit prices and/or total price in US Dollars; and

1.1.4. include any specific shipping instructions, bill-to and ship-to addresses, tax-exempt certificates and other special instructions as required.

1.2. All purchase orders are deemed accepted when Synectics issues a written confirmation of the purchase order. Any subsequent changes to the same purchase order will require an additional acknowledgement by Synectics to take effect.

1.3. Purchase orders which Synectics has accepted may be cancelled by the Buyer no more than five (5) business days after receiving Synectics' order confirmation, provided order has not yet shipped. Cancellation requests received after this grace period may be accepted at Synectics’ discretion and charges may apply. The Buyer shall fully indemnify Synectics against all losses, costs, damages, work done, charges and expenses undertaken or incurred by Synectics prior to or because of, such cancellation.

1.4. Synectics may make changes to the specifications, design, materials or finishes of any of the Products or any of the services which are required to conform to any applicable legal, safety or other statutory or regulatory requirements or which do not materially affect their quality or performance.

2. PRICES

2.1. All prices published or provided to the Buyer are in US Dollars and are exclusive of any applicable taxes. If Synectics is required to pay any of these additional costs on behalf of the Buyer, it shall be entitled to seek full reimbursement from the Buyer for such costs or the Buyer shall supply a satisfactory tax exemption or resale certificate. Estimates will be honored for thirty (30) days from the quotation date unless otherwise specified.

2.2. If any of the price assumptions contained in the quote produced by Synectics are not correct, Synectics may change the pricing with written notice via a written price amendment (Price Amendment Notice). The amended prices will take effect from the date set out in the Price Amendment Notice. In the case of a Price Amendment Notice which decreases the pricing the Buyer has the right to cancel any unshipped purchase orders within ten (10) days and replace the purchase orders with new pricing.

3. PAYMENT

3.1. Payment for Products shall be net thirty (30) days from the date of invoice unless other conditions have been agreed upon in writing by Synectics.

3.2. If the Buyer fails to make any payment under this Contract by the due date then (without prejudice to its other rights and remedies), Synectics may charge a late payment fee equal to 3% of the price, compounded monthly until full payment is received. Synectics will be entitled to suspend any further deliveries or the performance of services until the outstanding amount has been received by Synectics.

3.3. Synectics is entitled to set-off or withhold any amounts it may owe to the Buyer under this Contract (for any reason at any point in time) against any monies owed by the Buyer to Synectics under this Contract.

4. DELIVERY AND RISKS

4.1. Synectics will use its' reasonable endeavours to deliver the Products to (i) the location (and via any method) set out in any specific instructions provided by the Buyer in its' purchase order or (ii) absent any specific
instructions, on an Ex Works basis (according to Incoterms) at Synectics’ UK location in Scunthorpe (Delivery Point).

4.2. When the Products are delivered according to a Buyer’s specific instructions in clause 4.1(i) above, the risks associated with the transportation of the Products to that Delivery Point will be borne by the Buyer.

4.3. Unless otherwise agreed between the parties, the Buyer shall arrange to collect equipment and hardware (comprising an order for Products) from the Delivery Point within ten (10) days of Synectics notifying the Buyer in writing that the equipment is ready for collection.

4.4. The quantity of any consignment of equipment as recorded by Synectics upon the dispatch from Synectics’ place of business to the Delivery Point shall be conclusive evidence of the quantity received by the Buyer on delivery.

4.5. ‘Delivery’ of the Product (to the extent this comprises equipment and hardware) is complete when the Product reaches the Delivery Point.

4.6. Product may be delivered by Synectics to the Delivery Point before any specified delivery date upon giving reasonable advance notice to the Buyer that the equipment is available for delivery.

4.7. Specific dates quoted for the delivery of the equipment in an Order are estimates only and unless expressly stated otherwise in writing, the time of delivery is not of the essence. If no dates are specified in the Order, delivery will be made within a reasonable time.

5. TITLE

5.1. Legal title to the equipment shall not pass to the Buyer and ultimately the end user until Synectics receives payment in full (in cash or cleared funds) for the equipment which has become due pursuant to the purchase order and the terms of this Contract.

5.2. The Buyer may resell or use the equipment in the ordinary course of its business before title has passed to it. During such re-sale, the Buyer is acting as principal and not as Synectics’ agent.

5.3. Legal title to any software supplied by Synectics will not pass to the Buyer and to the extent the same is developed by Synectics it will be subject to the license in clause 11.

6. FORCE MAJEURE

6.1. Synectics shall not be liable for breach of this Contract through any failure to perform or any delay in performing their obligations under the Contract if the delay or failure was due to any Force Majeure Event.

6.2. Force Majeure Event means any of the following:

6.2.1. government actions relating to war or threat of war, national emergency, riot, civil disturbance, acts of domestic or international terrorism, sabotage or requisition;

6.2.2. a cyber-attack (including but not limited to virus attacks or deliberate use of any form of malware, ransomware, phishing, spyware, ‘Trojan Horse’ viruses or any form of ‘denial-of-service’ attacks) perpetrated by a third party upon the computer systems of either Synectics or the Buyer, provided always that Synectics or the Buyer (as the case may be) had installed the latest available firewall and security updates applicable to their computer systems at the time of the attack;

6.2.3. an act of God, fire, explosion, flood, epidemic or pandemic;

6.2.4. any unexpected change to the import or export regulations relating to any of the Products or any embargoes placed on the Products;

6.2.5. labor disputes which may involve the Synectics workforce; or

6.2.6. the inability of Synectics to obtain or a delay in obtaining supplies of adequate materials, parts, machinery or labor necessary for Synectics to perform its obligations under this Contract.

6.3. Nothing in this clause 6 shall be deemed to reduce or prevent Synectics or the Buyer from using their reasonable endeavours to re-commence performing their obligations, notwithstanding the existence of any ongoing Force Majeure Event, so long as it remains safe to do so.
7. **BUYER AND END USER RESPONSIBILITIES**

7.1. If Synectics' performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer or the end user or any of their agents, subcontractors, consultants or employees whether or not such act or omission amounts to a breach of the Buyer / end user responsibilities contained in the quote documentation provided by Synectics, then Synectics shall:

7.1.1. not be liable for any costs, charges or losses or damages of any kind, sustained or incurred by the Buyer that arise directly or indirectly from such prevention or delay;

7.1.2. be entitled to payment of the prices despite any such prevention or delay; and

7.1.3. be entitled to recover from the Buyer, any reasonable additional costs, charges, or losses Synectics sustains or incurs that arise directly or indirectly from such prevention or delay.

8. **WARRANTY AND RETURN POLICY**

8.1. **Equipment**: Synectics warrants to the original Buyer and end user that new equipment shall be free from defects in workmanship and materials for a period of three (3) years plus one (1) month from the date of shipment. Synectics warrants specified performance of new equipment provided such equipment is used, installed and maintained in accordance with the conditions set forth in the operating and maintenance manuals. Upon receipt of any returned Product, Synectics will perform a full inspection to determine Synectics' obligation under this warranty. This warranty is limited, at Synectics' option, to either (i) the repair or replacement of the non-conforming equipment, returned FOB at the point of repair or replacement or (ii) repayment of the price paid by the Buyer attributable to such non-conforming equipment. The Buyer or the end user shall return the equipment fully insured to such point of repair or replacement as Synectics may direct, with all return shipping charges paid by the Buyer. If the Product is covered by this warranty the Products will be repaired and/or replaced and Synectics will arrange (at their cost) to return the Product to the Buyer. If on review by Synectics, no fault is found with the returned Product, the cost of returning the Products to the Buyer will be borne by the Buyer, if the Buyer chooses to have the Product returned to them.

8.2. **Services**: Synectics warrants any services/technical assistance furnished under the Contract shall be provided in a professional manner with reasonable care and skill. The Buyer's exclusive remedy for breach of this limited warranty shall be at Synectic's sole option, to give credit for or re-perform the services in question. Warranty shall only extend for a period of sixty (60) days after completion of services.

8.3. **Software**: Synectic warrants for three (3) months from the date of Delivery to the Buyer, that the software supplied will perform in accordance with the accompanying user manual and will be free from defects under normal use. Synectics does not warrant that software product functionality will meet end user requirements, or that operation will be error free or without interruption. Buyer's exclusive remedy for breach of this limited warranty shall be, at Synectic's sole discretion, replacement of any defective media returned within the warranty period or, if no replacement which is free of defect is available, refund of the amount paid. To the maximum extent permitted by law, Synectics disclaims all other warranties, either express or implied, including, but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the software and associated media.

8.4. Without limitation of the foregoing, the warranties in this clause 8 shall not apply (i) to the performance of any system of which Synectics' Products are a component part unless caused exclusively by defective products provided hereunder; (ii) to deterioration by corrosion or any cause of failure other than defective material or workmanship; or (iii) to any Synectics' Products or parts thereof which have been tampered with or altered or repaired by anyone except Synectics or someone authorized by Synectics, or subjected to misuse, neglect, abuse or improper use or misapplications such as breakage by negligence, accident, vandalism, the elements, shock, vibration, or exposure to any other service, range or environment of greater severity than that for which the Product was designed.

8.5. **Non defective returns**: If the Buyer has over-ordered any Products or has incorrectly ordered any Products and subsequently wants to return the surplus Products (Surplus Stock) to Synectics, they must notify Synectics in writing as soon as reasonably possible but in any event no later than 90 days of when Delivery of the Surplus Stock is complete.

8.6. At their discretion, Synectics may choose whether to authorize the return of the Surplus Stock. Surplus Stock that is authorized for return to Synectics is subject to a 15% restocking charge and it should be properly packaged for shipment, and must be returned in the condition originally received by the Buyer on Delivery. The Surplus Stock must be returned in full, free from damage, abuse or modification and should include all
original packaging and materials including any UPC codes and all relevant accessories. The Buyer will take full responsibility for arranging the safe return of the Surplus Stock and will bear all the risk and all costs associated with the return. Upon receipt Synectics will complete an inspection of the Surplus Stock. If the Buyer has not returned the Surplus Stock in line with this clause, Synectics is entitled, at their discretion, to raise additional re-stocking charges up to the price of the Surplus Stock that the Buyer had originally agreed to pay (had the Surplus Stock not been returned). Synectics will issue the appropriate credit to the Buyer once the return inspection is complete.

9. LIMITATION OF LIABILITY

9.1 There are no warranties, express or implied, arising from course of dealing, course of performance, or usage of trade which extend beyond the face of clause 8.

9.2 Synectics neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its Products.

9.3 Synectics has no responsibility whatsoever for reimbursing the Buyer, its customers or end users of the Products, nor shall Synectics be liable in damages for repair or replacement costs incurred by the Buyer, its customers or end users of the Products in connection with the Products or parts thereof, without Synectics first having given its written authorization for such charges and without Synectics having an opportunity to perform its warranty obligations as hereinabove set forth. Synectics’ warranties as hereinabove set forth shall not be enlarged or affected by, and no obligation or liability shall arise or grow out of Synectics’ rendering of technical assistance or service in connection with the Products furnished hereunder. The limitations set forth herein shall not be affected by the failure of the repair and replacement remedy provided above.

9.4 In no event shall Synectics be liable to the Buyer or the end user in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever, or for any pure economic loss, loss of profit, loss of business, loss of reputation, loss of anticipated savings, loss of revenue, loss of production, depletion of goodwill or lie loss (whether direct or indirect), and whether or not caused by the negligence of the Buyer or its employees, agents or authorized representatives, which arises out of or in connection with this Contract.

9.5 In no event shall Buyer, its successors, assignees, customers or users of the Products commence any action against Synectics arising out of the sale, delivery or use of the Products and regardless of the form of the action (whether in contract, strict liability or tort, including negligence) later than one (1) year after the cause of action may have accrued. The Buyer's assertion of any rights under the warranty provisions above shall be in writing and shall specify with particularity the alleged defects in the Products.

9.6 Synectics shall not be bound by any representations or statements on the part of its employees or agents whether oral or in writing including those made in any promotional materials.

9.7 To the extent permitted by law, Synectics’ total liability in connection with the sale of its Products for damages and expenses arising from any default or defaults, breach or breaches of warranty or failure to deliver Products in conformance with the purchase order or breach of Contract (regardless of the form of action, whether in contract or in tort) shall not exceed the price paid to Synectics for the particular Products involved in the occurrence giving rise to such liability. The period of such liability shall not extend beyond the warranty period. The limitations set forth herein shall not be affected by the repair and replacement remedy provided in Synectics’ standard limited warranty.

9.8 The right to enforce the foregoing warranties is expressly conditioned upon the Buyer or the end user notifying Synectics in writing during the warranty period of any alleged defect or non-conformity, stating specifically the nature of the alleged defect or non-conformity. Synectics shall have the right, upon such notification, to review, inspect and/or examine the Products. The Buyer or end user shall, at their cost, make the Products available to Synectics for inspection purposes at such location, including without limitation Synectics’ facility, as Synectics shall direct.

9.9 Any extended warranties provided to the Buyer by Synectics that are over and above those offered in this clause 9 will be subject to the terms of this Contract.

10 INDEMNITIES

10.1 The Buyer shall indemnify, defend and hold Synectics and any affiliated company and each of their respective officers, directors and employees, harmless from all claims, and actual damages, and other
reasonable expenses, including without limitation attorney’s fees and costs incurred, that in any way arise out of the Buyer's negligent possession, handling, use or other application of the Products.

10.2 Notwithstanding any other provision of this Contract, Synectics will defend or settle at its own expense and indemnify the Buyer and its employees, officers, and agents from any proceedings, suits, actions or claims successfully brought against them by any third party and from which there is no further right to appeal by either party, provided always that the Buyer:

10.2.1 allows Synectics, at its option, to direct and control the investigation, defense and settlement of such claim;
10.2.2 gives Synectics all reasonable assistance in connection with such claim; and
10.2.3 is notified in writing within ten (10) business days from the date of receipt of the service or action by the Buyer.

10.3 Synectics will not indemnify the Buyer to the extent that such infringement arises from:

10.3.1 the use of the Products by the Buyer or the end user other than as contemplated by this Contract;
10.3.2 the failure of the Buyer or the end user to use corrections or modifications made available by Synectics if such corrections and modifications would have prevented the infringement;
10.3.3 the use by the Buyer or the end user of the Products in combination with any product or software not owned, developed or provided or recommended by Synectics; or
10.3.4 modifications made to the Products or product configurations that are not authorized by Synectics.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 All intellectual property rights in or arising out of or provided in connection with the Products (but excluding intellectual property rights in any materials provided by the equipment or any such rights in third party software) shall be owned and fully retained by Synectics.

11.2 Synectics grants to the Buyer and/or the end user, a fully paid-up, worldwide, non-exclusive license during the term of the Contract to use the software and associated deliverables (excluding materials provided by the Buyer) for the purpose of receiving and using the Products.

11.3 The Buyer and/or the end user shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Buyer grants Synectics a fully paid-up, non-exclusive, royalty-free non-transferable license to copy and modify any materials provided by the Buyer to Synectics for the term of the Contract for the purpose of providing any services to the Buyer.

12 TERMINATION

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect if;

12.1.1 the other party commits a material breach of its obligations under the Contract and (providing that such breach is capable of remedy) fails to remedy that breach within fifteen (15) days after receipt of a notice in writing from the injured party requesting them to do so;
12.1.2 the other party takes any step or action in connection with its entering administration, liquidation, files a petition in bankruptcy, or becomes insolvent, or makes an assignment for the benefit of creditors or a receiver is appointed for the other party, or if the other party takes any steps or action in another jurisdiction, in connection with any analogous insolvency procedures in the relevant jurisdiction;
12.1.3 the other party suspends or threatens to suspend or ceases or threatens to cease to carry on all or a substantial part of its business;
12.1.4 one party reasonably anticipates that any one of the above set of circumstances is about to occur in respect of the other party; or

12.1.5 one party fails to pay any amount due under the Contract on the due date for payment.

12.2 On termination of the Contract;

12.2.1 the Buyer shall immediately pay all Synectics’s outstanding unpaid invoices (and interest accrued thereon). In respect of any Products supplied but for which no invoice has been submitted, Synectics shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and

12.2.2 the Buyer shall return all Synectics’s materials, Deliverables or equipment which have not been fully paid for.

12.3 If the Buyer fails to comply with clause 12.2 Synectics may enter the Buyer’s premises and take possession of the Products which have been delivered to the Buyer.

12.4 Termination of the Contract shall not affect the rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including any right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.5 Without prejudice to any other right or provision of this Contract and without incurring any liability to the Buyer, Synectics is entitled, in its discretion and subject to giving the Buyer not less than three (3) months’ written notice, to terminate any part (or all) of this Contract or any Order.

12.6 Any provision of the Contract which is intended to have effect after termination (or expiry) shall continue in full force and effect.

13 MISCELLANEOUS

13.1 Each right of remedy of Synectics under the Contract is reserved without prejudice to any other right of remedy Synectics may have (whether under the Contract or not).

13.2 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the extent necessary to make it valid, legal and enforceable. If such modification is not possible the relevant provision or part provision shall be deemed deleted and such deletion shall not affect the enforceability of the rest of the Contract.

13.3 Each party acknowledges that in entering the Contract it has not relied on and shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in the Contract. Neither party shall have any claim for innocent or negligent misrepresentation based on any statement in the Contract.

13.4 Failure by Synectics to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.5 A waiver by Synectics of any breach of the Contract by the Buyer will not be construed as a waiver of any subsequent breach of the same or any other provision.

13.6 Synectics may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Buyer’s consent.

13.7 The Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without Synectics’ prior written consent.

13.8 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the internal laws of the State of California.

13.9 Any action arising out of the sale or use of Products to or by the Buyer shall be brought and maintained exclusively in the Superior Court of the State of California in and for the County of Santa Barbara. The parties hereby consent to the jurisdiction of said Court and hereby waive all objections to such jurisdiction, including any objections that such forum is not convenient, and any right to remove such action to a Federal District Court.