

**LETF RESOLUTION 16-01**

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF PANAMA CITY BEACH, SITTING AS THE LAW ENFORCEMENT TRUST BOARD; AUTHORIZING EXPENDITURES FROM THE LAW ENFORCEMENT TRUST FUND FOR THE PURCHASE OF A 3D LASER SCANNER AND ACCESSORIES AND SOFTWARE RELATED THERETO IN THE AMOUNT OF \$79,734.35.

**WHEREAS**, the Law Enforcement Trust Fund is a special fund that can only be used for purposes designated by Section 932.7055, Florida Statutes, such as crime prevention, safe neighborhoods, protracted investigations, technical equipment and community relations programs; and

**WHEREAS**, after July 1, 1992, and during every fiscal year thereafter, any local law enforcement agency that acquires at least \$15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 15% of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, safe neighborhood, or school resource officer programs; and

**WHEREAS**, the police department recommends a portion of the funds be appropriated to the City's police department; and

**WHEREAS**, the City Council finds that these expenditures satisfy the statutory requirements for use of Law Enforcement Trust Funds.

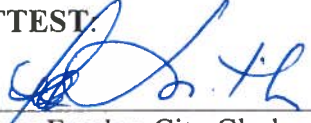
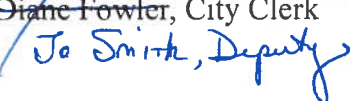
**BE IT RESOLVED** by the City Council of the City of Panama City Beach, sitting as the Law Enforcement Trust Board, that the appropriate officers of the City are authorized to purchase on behalf of the City a FARO Focus 3D X330 Laser Scanner, in an amount of Seventy Nine Thousand Seven Hundred Thirty Four Dollars and Thirty Five Cents (\$79,734.35), on substantially the terms and specifications of the proposal attached and presented to the Council today, draft dated March 28, 2016, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED, APPROVED AND ADOPTED** in regular session this 28<sup>th</sup> day of April, 2016.

**CITY OF PANAMA CITY BEACH**

By:   
Mike Thomas, Mayor

**ATTEST.**  
  
Diane Fowler, City Clerk  
  
Jo Smith, Deputy

Drew R. Whitman  
Chief of Police

# Panama City Beach Police Department

Chad Lindsey  
Deputy Chief of Police

17110 Firenzo Street  
Panama City Beach, Florida 32413-2128  
(850) 233-5000 Fax (850) 233-5013

[www.beachpolice.org](http://www.beachpolice.org)

To: Drew R. Whitman  
Chief of Police

From: Captain Rich McClanahan  
Administrative Division Commander

Date: April 18, 2016

RE FARO Focus 3D X330 Laser Scanner

Chief,

Sealed bids were solicited/advertised on the City's website on March 29th, 2016, and set for a public opening date of April 12th, 2016. The only bid submitted was FARO Technologies, Inc. for \$79,734.35. The purchase price includes the following:

FARO Focus 3D X330 Laser Scanner; Ships with: (1) one Focus 3D X330, with GPS, compass, altimeter (barometer), dual-axis compensator and WLAN, (1) one year standard warranty, (1) one power block battery, (1) one 32GB SD Card, (1) one SD Card Reader, (1) one SD Card Cover, (1) one Power Dock, (1) one Quick Charge Power Supply, (1) one Car Power Supply, (1) one Rugged Transport Case with Wheels, (1) one Ruggedized Protection and Transport Cover (in aluminum), (1) one Panorama Quick Release, (1) one Optical Cleaning Set;

- Scene Version 5.MN Software
- Scene Dongle w/Software Upgrade
- Focus 3D Batter Power Block
- Carbon Fiber Compact Tri-Pod
- FARO Scene Extension Forensic Software
- FARO CZ Point Cloud Diagram Software
- FARO Software CAD Zone Software Dongle
- 3D Scene Video Pro App
- Additional Focus 3D (3) three year extended Warranty
- Focus 3D (3) three year Scene Software Maintenance
- FARO On-Site (5) Five Day Training Upgrade
- 200mm Koppa Target Spheres w/Tri-Pod Mounting Kit
- Shipping



Capt. Rich L. McClanahan  
Administrative Division Commander

Captain Wayne A. Maddox  
Uniform Patrol Division

Captain Robert Clarkson  
Criminal Investigative Division

Captain Richard L. McClanahan  
Administrative Division

Lt. Jamey Wright  
Risk Mgt.

*"Dedicated To Excellence"*



FARO Technologies Inc  
 250 Technology Park  
 Lake Mary FL 32746-7115  
 Phone No: (866)874-1145  
 Fax No: (407)562-5282  
 Email: Ethan.Greenberg@faro.com

Remit to:  
 FARO Technologies, Inc.  
 P.O. Box 116908  
 Atlanta, GA 30368-6908

Quotation No: 20053969  
 Quote Date: 03/28/2016  
 Expiration Date: 05/31/2016  
 Regional Manager: Kelly Watt  
 Account Manager: Richard Britt  
 Sales Support: Ethan Greenberg  
 Ship: 2 Day  
 Payment Terms: Net due in 30 days  
 with approved credit  
 Delivery Terms: EXW Origin  
 Delivery Date: 2-6 Weeks

Bill To :  
 PANAMA CITY BEACH POLICE  
 DEPARTMENT  
 17110 Firenzo Ave.  
 Panama City Beach FL 32413  
 US

Ship To :  
 PANAMA CITY BEACH POLICE  
 DEPARTMENT  
 Rich McClanahan  
 17110 Firenzo Ave.  
 Panama City Beach FL 32413  
 US


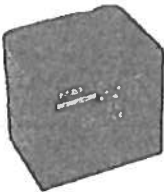

Qty	Item No.	Description	Unit Price	Discount	Ext. Price
1	S-7-X330	3D_HW_LS_Focus3D X330 Focus3D X 330 Laser Scanner. Ships with: 1 Focus3D X 330, with GPS, compass, altimeter (barometer), dual-axis compensator and WLAN, 1-Year Standard Warranty , 1 PowerBlock Battery, 1 32GB SD Card, 1 SD Card Reader, 1 SD Card Cover, 1 Power Dock, 1 Quick Charge Power Supply, 1 Car Power Supply, 1 Rugged Transport Case with Wheels, 1 Ruggedized Protection and Transport Cover (in aluminum), 1 Panorama Quick Release, 1 Optical Cleaning Set, Training at FARO facility. SCENE Software licenses are purchased separately. NOTE: lead-time may take 6 weeks or more after receipt of written order.	53,990.00	6,230.00	47,760.00
1	SOFTS0302	3D_SW_SC_SCENE SCENE version 5.N. Software to process data of FARO 3D laser scanners. Includes 1-year of software maintenance (SMAS0001)	5,990.00	728.00	5,262.00
1	SOFTS0369	3D_SW_SC_SCENE Dongle Upgrade from existing standard soft lock license to a hard lock (USB Dongle) for one Scene single user license. SCENE licenses purchased separately.	190.00	0.00	190.00



SCENE

SCENE



PURCHASE AGREEMENT AND CONDITIONS OF SALE Customer will pay any federal, state and local taxes. All conditions of sale, service and warranty as described in FARO standard purchase conditions currently on file with FARO are made as part of this Quotation and are incorporated herein by reference (I/control/04/ref198-012). DR12 PLEASE REFERENCE FARO QUOTE NUMBER ON ALL DOCUMENTS. BY REFERENCING FARO QUOTE, CUSTOMER AGREES TO SAID TERMS AND CONDITIONS AS LISTED ON FARO QUOTATION.  
 FARO Technologies GSA Contract # GS24F0044M

Qty	Item No.	Description	Unit Price	Discount	Ext. Price
1	TR-LS-SCN-POS	<p>Laser Scanner Tr. - FARO Fac. - Inc</p>  <p>Three-day course for two (2) trainee at an approved FARO training facility that discusses LS operation, setup, and basic measurements. NOTE: Classroom trainings are limited to six (6) trainees and are scheduled on a first come, first served basis. Classes can be canceled within two weeks of the scheduled date if sufficient enrollment is not met. NOTE: Training will expire if not taken within 90-days of receipt of equipment. No charge item applicable only with purchase of laser scanner.</p>	0.00	0.00	0.00
1	ACCSS6001	<p>3D_AC_LS_Focus3D Battery Power Block</p>  <p>Power Block battery for Laser Scanner Focus3D</p>	715.00	107.25	607.75
1	ACCSS6005	<p>3D_AC_LS_Carbon Fiber Compact Tripod</p>  <p>High-level carbon fiber tripod for Focus3D X 330 and Focus 3D X 130.</p>	910.00	136.50	773.50




Qty	Item No.	Description	Unit Price	Discount	Ext. Price
1	ACCSS0287	200mm Koppa Target W/ Tripod Mount Kit  A complete package of target spheres along with tripods and other accessories, shipped in 2 crates. Spheres are sprayed with #KoppaTuff™ coating. The first crate contains a 6 pack of 200mm target spheres with magnetic bases and individual cotton storage/handling bags, and 6 1/4-20 camera tripod mount plates. The second crate contains tripods and accessories that provide most of the standard mounting options for use in the field. Included are 6 camera tripods, 3 small flexible tripods, 3 traffic cone Adapters, and a dozen 2" fender washers.	2,322.00	464.40	1,857.60
		 <small>Product Available</small>			
1	SOFTS0334	FARO Scene Extension Forensic Extension of FARO SCENE software with additional features for forensic applications.	2,000.00	900.00	1,100.00
					

1 SOFT50011



FARO CZ Point Cloud  
For use with a Laser Scanner. Use FARO CZ Point Cloud to create 2D and 3D diagrams from the point cloud data captured with the FARO Focus3D scanner. CZ Point Cloud includes all the features of Crash Zone and Crime Zone plus unique tools for selecting data points, creating accurate diagrams and animations from a point cloud.

5,495.00 2,472.75 3,022.25

Qty	Item No.	Description	Unit Price	Discount	Ext. Price
1	SOFT50027-D-S	FARO CAD Zone Software Dongle	99.00	0.00	99.00
					
1	APPS01002	3D_SW_AP_SCENE Video Pro App SCENE Video Pro App, for SCENE single user license Plug-in for SCENE 5.N to create animated videos from scan data.	1,340.00	670.00	670.00
					
1	SWS-FCX-3	FARO Focus3D X Std. Warr-3 Yr Three-year Standard Warranty for FARO Focus3D X includes annual certification and recalibration. Parts, labor and return shipping charges covered. Goal is to have service completed within 10 business days from date of receipt.	11,385.00	2,846.25	8,538.75
1	SMAS0002	SCENE - Maint. - 3 Yr.s Maintenance for SCENE software. Includes SCENE software upgrades during the term of the contract. Duration: 3 year. Scope of service according to the conditions of the SCENE maintenance contract.	2,490.00	622.50	1,867.50
					



Qty	Item No.	Description	Unit Price	Discount	Ext. Price
1	TRLSSCNPOSFORO	OnSite Forensics Cust-Site Upg. 5 Day Upgrade of TR-LS-SCN-POS (Three-day FARO facility class) to five-day industry specific scanner training for accident reconstruction and forensics applications to be conducted by an industry expert with experience in accident reconstruction and forensics and a variety of associated software packages. This customer site class includes basics of hardware and Scene software, as well as customized training in the customers' applications. Customer site trainings are designed for up to four (4) trainees to ensure proper transfer of knowledge and understanding. Price per class. NOTE: Training will expire if not taken within 90-days of purchase.	7,900.00	0.00	7,900.00

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Order Total:	94,826.00
Discount Amount:	-15,177.60
Shipping Total:	86.00
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Total in USD:	79,734.35



## Additional Information

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### QUOTE TERMS

To accurately and promptly process your order, the following information is required with your Purchase Order:

1. Purchase Order Number (PO#)
2. Bill To AND Ship To Address (even if they are the same)
3. Net 30 or Sooner Payment Terms
4. Prepay and Add Freight Charges OR Collect (with your shippers Account #)
5. Method of Shipment (Best Way, Ground, Overnight, 2DAY)
6. FOB Origin or Destination (for GSA and Warranty ONLY Customers)
7. FARO Quote Number
8. PO Signed and Dated
9. Ship To State Tax Exemption Certificate OR acknowledgement to charge tax
10. Signed Credit Application (New Customers ONLY)

Quoted delivery terms are contingent upon timely receipt of all above listed items

### CALIBRATION CAPABILITIES

FARO meets the calibration requirements of ISO 17025. If another calibration standard is required please discuss with your sales contact.

FARO follows the recommendation of the ASME B89.4.22-2004, Appendix J, in the application of the decision rule to testing results. This appendix states "B89 standards that adopt standards referencing ISO 14253-1 as a normative standard shall explicitly state a different default decision rule, where the 4:1 simple acceptance and rejection rule from B89.7.3.1 shall be the default rule unless a different rule is specified."



## STANDARD TERMS AND CONDITIONS OF SALE

These standard terms and conditions of sale are the only terms and conditions, oral or written, applying to the sale of equipment, Software, other products or services ("Product") to Purchaser except for additional terms consistent with these standard terms and conditions on prices, quantities, delivery schedules, and the description of the Products as set forth in an order issued by FARO or approved by FARO (each, an "Order"). FARO hereby objects to and rejects any other terms or conditions appearing on, incorporated by reference in or attached to any purchase order, acceptance, acknowledgment, invoice, transmittal or other document and FARO's acceptance of any Order is expressly made conditional on Purchaser's acceptance of these standard terms and conditions. FARO's failure to object to any provision contained in a document or communication from Purchaser shall not be a waiver of these standard terms and conditions. Acceptance of these standard terms and conditions and any Order, both or either of which may be delivered to Purchaser in electronic form by FARO shall be deemed to have occurred upon the earlier of (i) executing or accepting these standard terms and conditions, (ii) executing or accepting any Order, (iii) when Purchaser is aware that FARO has commenced performance thereunder or (iv) taking delivery of any Products.

All capitalized terms used but not defined in the body of this document are defined in Section 10.00.

- 1.00 Payment of Purchase Price  
1.01 Subject to credit approval by FARO and except as otherwise expressly set forth in an Order, the Purchase Price for Product shall be paid to FARO within thirty (30) days from the date of FARO's invoice. If FARO determines not to extend credit to Purchaser, FARO reserves the right to require Purchaser to pay for Product by wire transfer prior to shipment. FARO shall be entitled to issue an invoice upon shipment of Product. FARO has the right to charge interest on late Purchase Price payments at a rate of 1.5% per month (18% per annum).  
1.02 Purchaser shall also pay FARO for any and all governmental taxes, charges or duties of every kind (excluding any tax based upon FARO's income) that FARO may be required to pay with respect to the production, transportation, export, import, storage, delivery, purchase, sale or use of Product. Purchaser shall provide FARO, on request, with properly completed exemption certificates for any tax or duty from which Purchaser claims an exemption.  
1.03 Purchaser grants to FARO a security interest in all Product sold pursuant to the Order, which FARO may perfect by filing a UCC Financing Statement or by other filings, registrations or notices as may be required. Any such security interest will remain in effect until FARO has received payment in full of the Purchase Price together with interest on any late Purchase Price payments.  
1.04 If Purchaser fails to make full payment of the Purchase Price in accordance with the terms set forth in the Order, FARO shall, at its sole option, have the right to the following remedies, which shall be cumulative and not alternative and which are not exclusive:  
a) the right to cancel the Order and enter Purchaser's premises to re-take possession of Product, in which event Purchaser agrees that any down payment or deposit for Product shall be forfeited to FARO as liquidated damages and not as a penalty, and all costs incurred by FARO in connection with the removal and subsequent transportation of Product shall be payable by Purchaser upon written demand.  
b) the right to enter Purchaser's premises and remove any Software, components of Product or other items necessary to render Product inoperative;  
c) the right to withhold all services which would otherwise be required to be provided by FARO pursuant to the Warranties set out in Section 4.00 hereof;  
d) the right to terminate any existing Software license agreement with Purchaser; and  
e) the right to pursue any other available remedy, including without limitation suing to collect any remaining balance of the Purchase Price (i.e., accelerate the payment of the Purchase Price, causing the entire balance to immediately become due and payable in full).  
1.05 Except as expressly set forth in Section 4.06, FARO does not permit returns on any Products shipped.  
1.06 No waiver by FARO of its rights under these terms and conditions shall be deemed to constitute a waiver of subsequent breaches or defaults by Purchaser. In the event more than one Product is being purchased pursuant to the Order, unless otherwise set forth herein, each payment received by FARO from Purchaser shall be applied pro rata against the cost of each Product rather than being applied to the Purchase Price of any Product.  
1.07 Purchaser shall pay FARO all costs and expenses of collection, suit, or other legal action to enforce the Order, including, but not limited to, all actual attorneys' and paralegal fees and collection costs FARO may assign any cause of action that it has against Purchaser without Purchaser's consent.  
2.00 Delivery and Transportation  
2.01 Delivery dates set forth in the Order are estimates and not guarantees, and are based upon conditions at the time such estimate is given.  
2.02 FARO shall not be liable for any loss or damage, whether direct, indirect or consequential, resulting from delivery of Product past the estimated delivery date. If Product is not delivered within 90 days of the estimated delivery date, Purchaser's sole remedy shall be to cancel the Order and to recover from FARO, without interest or penalty, the amount of the down payment or deposit and any other part of the Purchase Price which has been paid by Purchaser. Notwithstanding the foregoing, such right of cancellation shall not extend to situations where delayed delivery is due to a Force Majeure Event (as defined in Section 9.01). Any delays resulting from a Force Majeure Event shall extend estimated delivery dates by the length of such delay.  
2.03 If there is a shortage of Product, excessive demand for Product or any other reason for which FARO is unable to supply the full amount of Product specified in Purchaser's Order, FARO reserves the right to allocate its available supply of Product among its customers and distributors. The allocation of Product shall be in such a manner and in such amounts as FARO determines in its sole discretion.  
2.04 Responsibility for all costs and risks in any way connected with the storage, transportation and installation of Product shall be borne entirely by Purchaser. If any disagreement arises as to whether or not damage to Product was in fact caused in storage, in transit or on installation, the opinion of FARO's technical advisors, acting reasonably, shall be conclusive.  
2.05 Unless otherwise agreed to by FARO in an Order, Product shall be delivered by FARO at FARO's premises EXW (Ex Works) as defined in Incoterms 2010.  
3.00 Installation, Operator Training and Maintenance  
3.01 Purchaser shall be responsible for installation of Product, including, without limitation, the preparation of its premises, the uncrating of Product and setting up of Product for operation.  
3.02 Subject to Section 4.00, Purchaser shall be responsible for all maintenance of Product.  
4.00 Warranties and Exclusions; Exclusive Remedies and Disclaimers  
4.01 Subject to Section 4.05, FARO warrants that any Product (but excluding Software and services) shall be free from material defects in workmanship or material affecting the fitness of Product for its usual purpose under normal conditions of use, service and maintenance. FARO makes no warranty that any Product will operate in an uninterrupted or error free manner.  
4.02 Subject to Section 4.05, FARO warrants that any Software shall operate substantially according to written user documentation provided by FARO. FARO makes no warranty that any Software will operate in an uninterrupted or error free manner.  
4.03 The warranties set out in paragraphs 4.01 and 4.02 above (together, the "Warranties") shall expire at the end of the twelve (12) month period commencing on the last day of the calendar month in which Product was delivered to Purchaser (the "Warranty Period").  
4.04 To properly make a claim under the Warranties, Purchaser must deliver written notice to FARO during the Warranty Period, at FARO's contact information set forth on the Order, of a breach of the Warranties, together with a description of such breach in reasonable detail. Within a reasonable time following receipt of such proper notice FARO shall have Product diagnosed by its service personnel. Nothing herein contained shall be construed as obligating FARO to make service, parts, or repairs available for any breach reported after the expiration of the Warranty Period. If Product is determined by FARO, in its reasonable opinion, to be covered by and in breach of the Warranties, FARO will, as Purchaser's sole and exclusive remedy, repair or adjust Product to the extent determined by FARO to be necessary or, at the option of FARO, will replace Product with replacement Product or parts therefor at no cost to Purchaser, other than the cost of shipping Product to FARO pursuant to Section 4.06. If Product is determined by FARO, in its reasonable opinion, not to be covered by or not to be in breach of the Warranties, Purchaser shall pay the cost of service, which shall be the amount that FARO would otherwise charge for an evaluation under a non-warranty service evaluation.  
4.05 The Warranties shall not apply to or cover:  
a) Any defects in any component of a Product if, in the reasonable opinion of FARO, (i) Product has been improperly stored, installed, operated, or maintained; (ii) the defect was caused by or relates to misuse or extraordinary use of Product, or to use of Product outside the purpose for which Product was designed and manufactured; (iii) Purchaser has permitted unauthorized modifications, additions, deletions, adjustments and/or repair to any Software, hard drive structure or content, or any other part of Product, or which might otherwise affect Product; or (iv) the defect was caused by, or repairs are required as a result of, causes external to FARO workmanship or the materials used by FARO. As used herein, "unauthorized" means that which has not been approved and authorized by FARO in writing.  
b) Any replacement of expendable items, including, but not limited to, fuses, diskettes, printer paper, printer ink, printing heads, disk cleaning materials, or similar cleaning items.  
c) Minor preventive and corrective maintenance, including, but not limited to, replacement of fuses, disk drive head cleaning, fan filter cleaning and system clock battery replacement.  
d) Any Product or component which was sold or transferred to any party other than the original Purchaser unless transferred in accordance with section 4.11 or prior express written consent is obtained.  
e) Any defect in or related to Product which FARO cannot duplicate with reasonable effort.  
f) Any defect in or related Product caused by materials, including hardware, software or data not supplied by FARO.  
g) Any defect caused or resulting from accident, physical, electrical or magnetic stress, failure of electric power, air condition or environmental controls, use in or with defective or non-compatible equipment, hardware, software or data.  
h) Any defect or problem caused by changes in the operating characteristics of computer systems, hardware or software developed after Product is delivered.  
i) Any Product exported by Purchaser outside of the United States or Canada.  
j) Any demonstration or used Product.  
k) Any services of FARO. ALL SERVICES OF FARO ARE PROVIDED TO PURCHASER 'AS IS' WITHOUT WARRANTY OF ANY KIND.  
l) Any Third Party Product sold or included with the Products. Such Third Party Products are provided with the manufacturer's warranties, if any, which FARO is permitted to pass on to Purchaser. OTHERWISE, SUCH THIRD PARTY PRODUCTS ARE PROVIDED TO PURCHASER 'AS IS' WITHOUT WARRANTY OF ANY KIND.  
4.06 Factory Repairs  
a) IF PRODUCT IS UNDER WARRANTY: Purchaser agrees to ship Product to FARO in the original packing container at Purchaser's sole cost and expense. FARO will return the repaired or replacement Product to Purchaser at FARO's sole cost and expense.  
IF PRODUCT IS UNDER A SEPARATE PREMIUM SERVICE PLAN: When practical, as determined by FARO in its sole discretion, and subject to availability, FARO will make available to Purchaser substitute component parts or substitute Product ("Temporary Replacements") as appropriate while Purchaser's Product is undergoing repair. Shipping charges for these Temporary Replacements will be the responsibility of FARO.  
b) IF PRODUCT IS NOT UNDER WARRANTY: Purchaser shall be responsible for the cost of any repair or replacement of any part, Software or Product, together with all shipping charges related to such repair or replacement. All charges shall be estimated and prepaid by Purchaser to FARO prior to commencement of repairs.  
4.07 FARO may authorize the manufacturer of a component of Product to perform any Warranty service.  
4.08 Purchaser's sole and exclusive remedy, and FARO's sole and exclusive liability hereunder, with respect to breach of warranty relating to any Product, consists of the obligation to repair, adjust or replace Product as provided in Section 4.04.  
4.09 DISCLAIMER OF WARRANTIES. THE WARRANTIES SPECIFIED IN THIS SECTION 4.00 ARE THE COMPLETE WARRANTIES BETWEEN FARO AND PURCHASER. THEY SUPERSEDE ALL PROPOSALS, PROMOTIONS, ADVERTISEMENTS, REPRESENTATIONS OR PRIOR WARRANTIES, VERBAL OR WRITTEN, AND ANY COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THESE WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION 4.00, FARO EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION OR QUALITY, AND NON-INFRINGEMENT.

- 4.10 FARO does not authorize any person (whether natural or corporate) to assume for FARO any liability in connection with or with respect to Product. No agent or employee of FARO has any authority to make any representation or promise on behalf of FARO, except as expressly set forth herein or in the Order, or to modify the terms or limitations of the Warranties. No verbal statements shall be binding upon FARO.
- 4.11 The Warranties extend only to Purchaser and are transferable by Purchaser only under the following conditions:  
1. Product is currently within the Warranty Period,  
2. The new owner is, or becomes, a Certified User,  
3. A FARO warranty transfer form is completed and submitted to FARO Customer Service.
- 4.12 All claims under the Warranties must originate with Purchaser, or any subsequent owner that becomes a Certified User, and Purchaser will indemnify, defend and hold FARO harmless from any and all claims, liabilities, damages, costs and expenses for breach of warranty asserted against FARO by any third party.
- 4.13 PURCHASER ACKNOWLEDGES THAT IT HAS PURCHASED PRODUCT BASED UPON ITS OWN KNOWLEDGE OF THE USES TO WHICH PRODUCT WILL BE PUT. FARO SPECIFICALLY DISCLAIMS ANY WARRANTY OR LIABILITY RELATED TO THE FITNESS OF PRODUCT FOR ANY PARTICULAR PURPOSE OR ARISING FROM THE INABILITY OF PURCHASER TO USE PRODUCT FOR ANY PARTICULAR PURPOSE.
- 4.14 FARO is an equal opportunity employer. All candidates for employment will be considered without regard to race, color, religion, sex, national origin, physical or mental disability, veteran status, or any other basis protected by applicable federal, state or local law.
- 5.00 Limitations of Liability
- 5.01 In no case shall FARO be liable for any indirect, special, incidental, punitive or consequential damages arising from any cause whatsoever, whether based in contract, tort (including without limitation negligence), strict product liability or any other theory of law (including without limitation theories of equitable relief), including, but not limited to, injury to or death of any operator or other person, damage or loss resulting from inability to use Product, increased operating costs, loss of production, loss of profits or revenues, loss of software or data, any cost or expense of providing substitute product or software during periods of, or resulting from, malfunction, non-use or maintenance or repair (except as provided in Section 4.05(b)), or damage to property. The disclaimer of liability for indirect, special, incidental, punitive and consequential damages extends to any damages which may be suffered by third parties, including without limitation, caused directly or indirectly resulting from test results or data produced by Product or any component thereof, and Purchaser agrees to indemnify and save FARO harmless from any such claims made by third parties.
- 5.02 FARO's maximum aggregate liability arising out of or relating to any Product from any cause whatsoever, whether based in contract, tort (including without limitation negligence), strict product liability or any other theory of law shall not exceed the Purchase Price received by FARO for the Product to which such liability relates. In all cases, FARO's maximum aggregate liability arising out of or relating to an Order shall not exceed the aggregate amounts paid by Purchaser to FARO under such Order.
- 5.03 The limitations of liability in this Section apply even if FARO had notice of the possibility of damages and even if any exclusive remedies fail of their essential purpose. Purchaser acknowledges that FARO has set its pricing in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in these terms and conditions, and that the same form an essential basis of the bargain between the parties.
- 6.00 Design Changes
- 6.01 Product is subject to changes in design, manufacture and programming between the date of the Order and the actual delivery date.
- 6.02 FARO reserves the right to implement such changes without Purchaser's consent. Notwithstanding the foregoing, nothing contained herein shall be construed as obligating FARO to include such changes in Product provided to Purchaser.
- 7.00 Intellectual Property
- 7.01 As between FARO and Purchaser, FARO owns all ownership in all FARO Intellectual Property, and Purchaser shall not own or acquire any right, title or interest in any FARO Intellectual Property. FARO grants Purchaser only a limited, non-exclusive, non-transferable license to use any Software in object code form only and, unless otherwise set forth in an Order or approved in writing by FARO, only with Product in which such Software is installed or embedded.
- 7.02 Purchaser acknowledges and agrees that the Software contains trade secrets, and confidential and proprietary information, of FARO, and shall maintain all Software as confidential and proprietary information of FARO, and shall use no less than the same degree of care to avoid misuse or improper disclosure of the trade secrets, and confidential and proprietary information, than Purchaser uses with respect to its own similar information, which shall be no less than a reasonable degree of care. Purchaser shall not, in whole or in part, reproduce or duplicate (other than that which is necessary and incidental to the ordinary use of the Software in compliance with these terms and conditions, or for purpose of making one (1) archival or back-up copy of the Software), alter, modify, disassemble, reverse assemble, decompile, reverse compile, reverse engineer, sell, transfer, assign, sublicense, lease, rent or use in connection with a service bureau or to provide services to others, in any manner the Software, in whole or in part, or permit access to or use thereof by any third party.
- 7.03 Purchaser acknowledges that any unauthorized use of the Software, or any right therein, will result in irreparable harm to FARO, and that FARO shall be entitled to damages, lost profits, attorney's fees, costs, expenses, and injunctive relief, including without limitation temporary restraining orders, preliminary injunctions and permanent injunctions from any such unauthorized use.
- 7.04 Purchaser shall forthwith execute any further assurances in the form of non-disclosure or licensing agreements which may reasonably be required by FARO in connection with the Software.
- 8.00 Indemnification
- Purchaser will defend, indemnify and hold harmless FARO against all claims, losses, liabilities, damages, costs and expenses either (a) on account of any damage to property or injury or death of persons caused by or arising out of Purchaser's (and/or any of Purchaser's employee's, agent's, affiliates and customer's) distribution, storage, handling, use, or disposal of Product or caused by or (b) arising out of: (i) any breach of contract by Purchaser; (ii) any acts or omissions of Purchaser (and/or any of Purchaser's employees, agents, affiliates and customers); or (iii) any willful misconduct or any violation by Purchaser (and/or by any of Purchaser's employees, agents, affiliates and customers) of any applicable law, rule or regulation.
- 9.00 Force Majeure/ Entire Agreement / Governing Law / Miscellaneous
- 9.01 FARO shall not be liable for any loss, damage, detention or delay due directly or indirectly to any cause beyond FARO's control (a "Force Majeure Event"), including without limitation, compliance with any rules, regulations, orders or instructions of any federal, state, county, municipal or other government or any department or agency thereof, acts of god, acts or omissions of Purchaser, acts of civil or military authorities, fires, floods, embargoes, war or insurrection, labor interruption through strike or walkout, transportation delays, or inability or difficulties in obtaining necessary labor, manufacturing facilities, materials or transportation from its usual sources.
- 9.02 These terms and conditions and the Order into which they are incorporated by reference constitute the entire agreement between FARO and Purchaser in respect to Product subject to such Order. There are no representations or warranties by FARO, express or implied, except for those contained herein, and these terms and conditions supersede and replace any proposals, quotations, or agreements, whether oral or written, between FARO and Purchaser with respect to such Order.
- 9.03 No representative of FARO has any authority to modify, alter, delete or add to any of the terms or conditions hereof. Any such modifications shall be void and of no force and effect.
- 9.04 The terms and conditions hereof shall be governed by and construed in accordance with the laws of the State of Florida, United States of America, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Purchaser and FARO agree that the sole and exclusive jurisdiction and venue for purposes of any and all lawsuits, disputes, causes of action, arbitrations or mediations shall be in either (a) the United States District Court for the Middle District of Florida, Orlando Division, or (b) the Business Court of the Ninth Judicial Circuit Court of Orange County, Florida.
- 9.05 These conditions shall not be construed more strictly against one party than another as a result of one party having drafted said instrument.
- 9.06 If any provision of these terms and conditions or the Order is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of these terms and conditions and the Order shall remain in full force and effect. Any provision of these terms and conditions or the Order held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- 9.07 FARO AND PURCHASER HEREBY IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, UNDER OR IN CONNECTION WITH THE ORDER OR THESE TERMS AND CONDITIONS, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENT OR ACTION RELATED THERETO OR HERETO.
- 9.08 Any claim, action, suit or other proceeding initiated by Purchaser in connection with any Product must be brought within one year after delivery to Purchaser of the applicable Product to which such claim, action, suit or other proceeding relates.
- 9.09 Purchaser shall not export or re-export any Product in violation of applicable law, rules or regulations.
- 10.00 Definitions
- 10.01 "Certified User" means any person who has completed at full session of product-specific training for Product.
- 10.02 "FARO" means FARO Technologies, Inc.
- 10.03 "FARO Intellectual Property" means all intellectual property rights relating to any Product, including without limitation, patents, copyrights, trademarks, trade secrets, and know-how, and any derivative works, improvements, modifications, repairs, maintenance, enhancements and updates of any Product.
- 10.04 "Purchaser" means the party buying Product and who is legally obligated under the Order.
- 10.05 "Software" means all computer programs, disk drive directory organization and content, sold pursuant to the Order.
- 10.06 "Purchase Price" means the agreed-upon price of Product set forth in the Order.
- 10.07 "Third Party Product" shall mean any equipment, products, Software or services of a third party that FARO sells or makes available to Purchaser under an Order.