



## Tridium's Price List Terms and Conditions for the Americas

As of October 25, 2007

**THESE TERMS AND CONDITIONS SUPERCEDE ANY TERMS AND CONDITIONS THAT ARE ATTACHED OR PART OF ANY ORDER FORM OR PURCHASE ORDER UNLESS SPECIFICALLY ALLOWED OR SUPERCEDED BY WRITTEN CONTRACT WITH TRIDIUM. PURCHASER MUST ACCEPT IN WRITING THESE TERMS AND CONDITIONS WITH EACH PURCHASE ORDER UNLESS THERE IS A WRITTEN CONTRACT BETWEEN PURCHASER AND TRIDIUM, IN FORM ACCEPTABLE TO TRIDIUM, INCORPORATING THE TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS.**

**Disclaimer and Purchased Representation.** There can be no assurance whatsoever that control systems such as the Tridium Niagara Framework and related software (comprised of Hardware as defined below and related software or "Licensed Materials") will protect Purchaser, its customers, or any individual or his, her or their respective property from harm. Appropriate safety precautions must always be taken when operating or maintaining equipment connected to the Niagara Framework. Tridium assumes no responsibility or liability for any injury or damage to any persons or property resulting from the use by Purchaser or its customers of the Niagara Framework. Further, Purchaser represents and warrants that it shall take all appropriate precautions, establish appropriate procedures and post appropriate notices to ensure that persons and property are not harmed in the event of an error, malfunction or unexpected operation of the Niagara Framework. Unless Tridium has provided its express written consent, neither the Hardware nor Licensed Materials may be, and Purchaser shall make reasonable business efforts to ensure that they are not, used in any application in which the failure of the Hardware and/or Licensed Materials could lead to death, personal injury or severe physical or property damage (collectively, "High-Risk Applications"), including but not limited to the operation of nuclear facilities, mass transit systems, aircraft navigation or aircraft communication systems, air traffic control, weapon systems and direct life support machines. Tridium expressly disclaims any express or implied warranty or condition of fitness for High-Risk Applications.

**Disclaimer of Software Warranty.** TRIDIUM LICENSES THE TRIDIUM NIAGARA FRAMEWORK "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND. TRIDIUM SPECIFICALLY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE OR FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TRIDIUM, OR ITS AGENTS OR EMPLOYEES SHALL CREATE OR FORM THE BASIS OF ANY WARRANTY OF ANY KIND.

**End User License Agreement.** Use of the Licensed Materials by a Purchaser or Purchaser's customer is governed by the terms of a separate end user agreement included in all copies of Licensed Materials. The end user license agreement must be entered into before running the Niagara Framework.

**Hardware Limited Warranty and Hardware Replacement Policy.** Tridium warrants for 18-months from date of shipment by Tridium that the JACE® controller and all other hardware components of the Tridium Niagara Framework (collectively, the "Hardware"), will be free from defects in material and workmanship. This warranty does not cover the product if it is damaged in the process of being installed or improperly used. This warranty does not cover replacement of Tridium's products damaged by abuse, accident, misuse, neglect, alteration, repair, disaster, improper installation, or improper testing. If the product is found to be defective, Tridium, at its option, will replace or repair the product at no charge provided that Purchaser delivers the product along with a Return Material Authorization (RMA) number (see below) with an explanation of any deficiency. If Purchaser ships the product, Purchaser must assume the risk of damage or loss in transit. Purchaser must use the original container (or the equivalent) to return the product. Repaired or replaced products will be returned at the same revision level as received or higher, at Tridium's option. Tridium reserves the right to replace discontinued product with an equivalent current generation product. Tridium assumes no responsibility for repairs made on the product, unless performed by Tridium authorized personnel. For materials furnished but not manufactured by Tridium, Tridium will pass through the warranty received from the manufacturer, to the extent permitted, to the Purchaser.

THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, GUARANTEES, OR REPRESENTATIONS, EXPRESS OR IMPLIED. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

**Purchaser's Remedies.** The Purchaser's remedies with respect to Hardware found to be defective in material or workmanship shall be limited exclusively to the right of repair or replacement of such defective Hardware. IN NO EVENT SHALL TRIDIUM BE LIABLE FOR CLAIMS (BASED UPON BREACH OF IMPLIED WARRANTY OR OTHERWISE) FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL OR FOR ANY EXPENSES INCURRED BY REASON OF THE USE OR MISUSE OF THE HARDWARE.

**Software Maintenance Agreements and Other Support.** Software Maintenance Agreements provide Purchaser and

Purchaser's customers access to all software upgrades released during the maintenance agreement period for the specified product. The Software Maintenance Agreements cover all interim service releases and major releases (example, Rev 2.2 to Rev 2.3, including all new features and functionality of the new release). New product releases (example, Niagara to Niagara<sup>AX</sup>.) are not included as part of Software Maintenance Agreements. Purchaser has no implicit or implied right to upgrades other than through the Software Maintenance Agreements that it purchases. Furthermore, Tridium has no obligation to provide any technical support to Purchaser or Purchaser's customers unless specifically agreed to in writing between Tridium and Purchaser.

**Acceptance and Cancellation of Orders.** Tridium reserves the right to reject, cancel or suspend any orders placed by Purchaser or refuse or delay shipment thereof if Purchaser fails to (i) place a valid order per these Terms and Conditions; (ii) make any payment as provided herein; (iii) meet commercially reasonable credit or financial requirements as determined by Tridium in its sole discretion; or (iv) otherwise comply with any terms or conditions stated herein or in any other agreement between Tridium and Purchaser. Each order that include Hardware is subject to a minimum billing charge of \$100.00 (this clause does not apply to additions to an existing order).

**Acceptance of Terms and Conditions.** The terms and conditions as stated herein shall apply to each order accepted or shipped by Tridium hereunder. Tridium's offer to sell products to Purchaser is expressly limited to these Terms and Conditions. Tridium hereby expressly objects to any term in any purchase order issued by Purchaser that is in conflict with or in addition to these Terms and Conditions. Any terms or conditions appearing on any order or confirmation received from Purchaser that are different from or in addition to those required hereunder shall not be binding on the parties, even if signed and returned, unless both parties hereto expressly agree in a separate writing to be bound by such separate or additional terms and conditions.

**Delivery of Hardware.** Tridium will ship each Hardware component to the Purchaser, or the Purchaser's freight forwarder, located within the United States of America, at the address specified in the shipping instructions on the purchase order received from the Purchaser. Tridium reserves the right to ship Hardware by any means it deems suitable. Tridium will not ship hardware to a location outside the United States of America. All deliveries are F.O.B. (Uniform Commercial Code terms) place of shipment. Purchaser is responsible for all shipping charges in accordance with Tridium's then current shipping and billing practices. Risk of loss shall pass to Purchaser upon Tridium's delivery to the carrier. Purchaser is responsible for import into the country of destination, transport through all countries other than the United States of America, payment of all duties and tariffs, and compliance with all export and import laws.

**Delivery of Licensed Materials.** Tridium will deliver the software directly to the Purchaser in an electronic file format by making the same available for download by Customer, or if expressly agreed by Tridium, by shipment of a CD-ROM or  
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such other means as determined by Tridium. Any such shipment will be made in accordance with the provisions for delivery of Hardware set forth above.

**Export.** Software and Hardware, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Purchaser agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export, or import the Licensed Materials. Without limiting the generality of the foregoing, the Licensed Materials may not be downloaded, used, sold, resold, sublicensed, diverted, transferred, reshipped, or otherwise exported or re-exported:

- i. in, into or through any country designated as a terrorist supporting country by the U.S. government or any of its agencies;
- ii. in, into or through any country which the U.S. has an embargo or with which the U.S. or any of its agencies maintains comprehensive trade controls;
- iii. to or by a national or resident of the countries described in (i) or (ii); or
- iv. to or by any party included in the United States Department of Commerce's Denied Persons List, Entity List or Unverified List; or the United States Department of the Treasury's Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations or Debarred Persons List; or is otherwise designated by the U.S. government or any of its agencies as a party with which it is unlawful to do business.

**Payment and Credit Terms.** Payment terms are cash in advance or by credit card payment made in advance of shipment unless Tridium has agreed in writing to other credit terms. If Tridium has agreed in writing to extend credit to Purchaser, then payment terms are net-thirty (30) days from date of invoice. If Purchaser fails to pay amounts when due, late charges of the lesser of one point five percent (1.5%) per month or the maximum allowable under applicable law shall also become payable to Tridium. In addition, failure of Purchaser to fully pay any fees within sixty (60) days after the applicable due date shall be deemed a material breach of these Terms and Conditions, justifying suspension of the performance by Tridium under any and all purchase orders placed by Purchaser, and will be sufficient cause for immediate termination of any such purchase orders by Tridium. Any such suspension does not relieve Purchaser from paying past due fees plus interest and in the event of collection enforcement, Purchaser shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorneys' fees, court costs and collection agency fees.

**Pricing Policy.** All prices are stated in, and payable in, U.S. Dollars. Prices are subject to change without notice. Written quotations will be honored for 30 days from the date of quotation or as stated therein. Orders already entered and

unshipped on the date of a price change will be invoiced at the prices on the date the order was received. Published prices are exclusive of freight costs. Tridium will add to the amount due under any purchase order the cost of freight whether shipped from a Tridium regional office or from the home office manufacturing facility. Published prices do not include any additional services such as design layout, system drawings, installation drawings, job site labor, shop labor, airfreight or special delivery charges. All labor and expenses for such services will be charged at the rates prevailing at the time and place of occurrence. Published prices do not include duties or sales, use, excise or other similar taxes and shall be paid by Purchaser in addition to the stated price; or in lieu thereof, Purchaser shall provide Tridium with required tax exemption forms.

**Returning Hardware.** Before returning any Hardware, whether within or outside the Warranty Period, the Purchaser must contact Tridium and obtain a Return Material Authorization (RMA) number by calling Tridium's home office. If Tridium verifies the Hardware is defective, it will issue the Purchaser an RMA number to place on the outer package of the product. Tridium is under no obligation to accept any Hardware without an RMA number on the package. The Purchaser must provide the unit serial number, and Project ID

Hardware and related installed software may be returned for a restocking fee if it is in an unopened and new condition. Factory-installed software may not be returned without the related Hardware. A restocking fee will be charged at 25% of the returned bundled hardware cost and a 75% credit will be issued upon inspection and validation of the returned device. Software products sold separately may not be returned for credit.

For in-warranty devices, Tridium will, within two business days of receipt of a complete and accurate purchase order for the replacement part and payment for the same by credit card, and subject to product availability, ship replacement units, prepaid via UPS either standard overnight, 2nd day, 3rd day, or UPS Ground in accordance with the Purchaser's requirements. The shipping and delivery terms applicable to such shipments shall be the same as provided above for all other products. When the replacement unit arrives, the Purchaser shall re-pack the defective unit in the same box in which the replacement unit was shipped, and return the same to Tridium. If Tridium receives the failed unit within 45 days from its shipment of the advanced replacement unit, Tridium will credit Purchaser's credit card for the purchase price of the replacement unit. Tridium will provide a 90 day warranty from the date of exchange or the balance of the original warranty period, whichever is longer.

For out-of-warranty devices, Tridium offers advance replacement units under its exchange program, subject to

product availability. A Purchaser's purchase order and payment by credit card is required to cover the price of the replacement unit and associated shipping charges. See the current Tridium price list for pricing of specific replacement units. If the failed unit is received within 45 days after the replacement unit is shipped, Tridium will credit Purchaser's credit card for the difference between the purchase price of the replacement unit and the exchange price for that unit, less shipping charges.. Tridium will provide a 90 day warranty from the date of exchange.

### **Shipping and Delivery Times.**

#### **Standard Delivery**

· Tridium will ship within ten (10) business days from the receipt of a valid and complete order.

#### **Rush Delivery**

· Tridium will ship as provided in this paragraph if the purchase order asks for "Rush Delivery", subject to product availability, and subject to Tridium's consent in the case of orders for twenty or more products. Tridium will advise Purchaser of the availability of Rush Delivery for orders that request Rush Delivery at the time of its acknowledgment of the order.

· For each order that includes Hardware for which Tridium agrees to provide Rush Delivery, Purchaser shall pay an amount equal to 25% of the purchase price of the entire order in advance of shipment. Rush Delivery orders for which Tridium issues an acknowledgment that the order is complete and in proper form by 10:00 a.m. Eastern Time will be shipped via UPS next-day service (a) within three business days after the day on which such acknowledgment is issued if the order includes Hardware, and (b ) the same day as such acknowledgment is issued if it includes only software. In either case, the Purchaser shall pay all shipping costs.

**Language and Law.** The language of all purchaser orders submitted under these Terms and Conditions shall be English, and any documents or notices provided hereunder, communications related hereto or any dispute resolution proceeding arising as a result of this agreement shall be conducted in English. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, United States of America, without regard to the conflicts of law provisions thereof and excluding the Convention on Contracts for the International Sale of Goods. Any action arising from or relating to this Agreement or the conduct of the parties pursuant hereto shall be commenced and heard solely within a federal or state court of competent jurisdiction found within the boundaries of the United States District Court for the Eastern District of Virginia, Richmond Division, and Tridium and Purchaser each consent to personal jurisdiction and venue in any such court.

*Signatures appear on next page*

IN WITNESS WHEREOF, Purchaser accepts these Terms and Conditions as stated above for the purchase order(s) listed below.

PURCHASE ORDER # \_\_\_\_\_

PURCHASER	TRIDIUM, INC.
<b>Signature:</b> _____	<b>Signature:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____
<b>Printed Name:</b> _____	<b>Printed Name:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____