

Kymeta Terms of Sale

These Kymeta Terms of Sale (“**Terms of Sale**”) are entered into by and between Kymeta Corporation, a Delaware corporation, having its principal place of business at 12277 134th Ct. NE, Ste. 100, Redmond, WA 98052 (“**Kymeta**”) and the customer identified on the applicable Sales Order for the Products and/or Services (“**Customer**”).

1.0 DEFINITIONS

1.1 “**Customer**” means the entity purchasing Products and/or Services from Kymeta as set forth on the applicable Sales Order.

1.2 “**Customer Data**” means information, data, and other content, in any form or medium that is collected, downloaded, or otherwise received, from Customer or an authorized user. For the avoidance of doubt, Customer Data does not include information, data, or other content that is derived from (a) analyzing or processing Customer Data or (b) Customer’s use of the Services.

1.3 “**Evaluation Period**” means the period of time set forth in the applicable Sales Order.

1.4 “**Documentation**” means user manuals, training materials, technical manuals, supporting materials and other information relating to the Products and/or Services provided to Customer by Kymeta, whether distributed in print or electronic format.

1.5 “**Personal Information**” means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located.

1.6 “**Products**” means Kymeta’s electronically steered antenna, a bi-directional satellite flat panel antenna that transmits and receives electromagnetic waves, that is capable of steering a radio frequency beam by using electronic circuits to adjust radiation patterns without a mechanical adjustment mechanism, which is integrated with hardware and other equipment (also known as a Terminal) in such quantities as listed in Exhibit A of the applicable Sales Order, and any peripherals or other items that Kymeta provides to Customer.

1.7 “**Purchase Order**” means an order issued by Customer to Kymeta for the Products and/or Services purchased under these Terms of Sale pursuant to a Sales Order issued by Kymeta and accepted and acknowledged by Customer or any other document issued by Customer and accepted by Kymeta for the Products and/or Services purchased pursuant to these Terms of Sale or some other mutually agreed upon terms.

1.8 “**Sales Order**” means an order signed by authorized representatives of each of Kymeta and Customer for the purchase of Products and/or Services.

1.9 “**Services**” means the managed broadband data connectivity service (using standard internet protocols) provided by Kymeta to Customer, utilizing a satellite-enabled connectivity and

broadband network, or other services provided by Kymeta to Customer as set forth on the applicable Sales Order.

1.10 **“Software”** means the computer software programs (solely in object code form) that Kymeta provides or makes available to Customer, whether on a standalone basis or incorporated into Products, as the case may be, including any updates that Kymeta makes commercially available, and may also include Kymeta’s hosted software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications of the foregoing, that Kymeta manages, operates, and maintains for remote electronic access and use by Customer and its authorized users.

2.0 SCOPE

These Terms of Sale set forth the terms and conditions for Customer’s purchase of Products and/or Services solely for Customer’s internal business use and for the purposes of testing and evaluation. Customer shall not resell to, make available for use by, or otherwise transfer title to any Products and/or Services to, any end user or other third party, including any reseller.

3.0 PRICES

3.1 Prices for Products and/or Services shall be those specified in the Sales Order.

3.2 All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms of Sale. Customer shall pay any taxes related to Products and/or Services provided pursuant to these Terms of Sale (except for taxes based on Kymeta’s revenue or income). Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

4.0 ORDERS

4.1 These Terms of Sale shall apply, regardless of any additional or conflicting terms on any Purchase Order, Sales Order or other correspondence submitted by Customer to Kymeta. Any such additional or conflicting terms are hereby deemed rejected by Kymeta.

4.2 Customer may not defer Product shipment or cancel the Sales Order.

5.0 SHIPPING AND DELIVERY

5.1 Scheduled shipping dates will be assigned by Kymeta based on Kymeta’s then-current lead times for the Products. Customer shall pay the shipping and handling charges in addition to the purchase price for the Products and/or Services, which will be included in remittance and/or commercial invoices issued by Kymeta. Shipment for Products shall be Ex Works, Incoterms 2010 from Kymeta’s designated shipping location or its manufacturer’s facility, as applicable (**“Origination Point”**). Customer shall be responsible for loading the Products at the Origination Point to Customer’s vehicle or Customer’s designated common carrier vehicle and for all freight,

handling and insurance charges subsequent to delivery. Title and risk of loss of Products transfer to Customer subsequent to delivery to the Origination Point.

5.2 Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance.

5.3 Customer specifically agrees to provide Kymeta with the complete name and address of each end user either (a) in the Purchase Order issued, or (b) in writing within five (5) days of receiving a request by Kymeta, and other information required under these Terms of Sale or requested by Kymeta. Export requirements are not the same for all destinations. Customer accepts any delays caused by the export licensing process as well as delays to comply with conditions of an individual export license.

5.4 KYMETA SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. EXCEPT IN ACCORDANCE WITH THE APPLICABLE SHIPPING TERMS SET FORTH IN THESE TERMS OF SALE, KYMETA SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH SHIPMENT, NOR SHALL THE CARRIER BE DEEMED TO BE AN AGENT OF KYMETA.

5.5 **All Sales are Final.** Kymeta does not accept returns unless (i) Kymeta shipped Products other than as specified in the Sales Order, (ii) such Products are unopened, and (iii) the Products are returned in accordance with Kymeta's then current return policy and procedures as provided to Customer from time to time.

6.0 PAYMENT

Upon and subject to credit approval by Kymeta, payment terms shall be thirty (30) days from date of the invoice, unless otherwise agreed to in writing by Kymeta. All payments shall be made in the currency stated on the applicable Sales Order. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, Kymeta may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) ten per cent (10%) per annum or (ii) the maximum rate permitted by law, whichever is less. Customer grants Kymeta a security interest in the Products purchased under these Terms of Sale to secure payment for such Products. If requested by Kymeta, Customer agrees to execute financing statements to perfect this security interest.

7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING

7.1 Customer's and its authorized end users' use of the Software is subject to the license grant and terms of the Kymeta End User License Agreement ("**EULA**"), which can be found at <http://www.kymetacorp.com/legal/tab-3/>.

7.2 Except as may be expressly and unambiguously stated otherwise in these Terms of Sale, Customer will not, and will not permit any other person to:

(a) copy, modify, or create derivative works or improvements of the Products, Services, Documentation and any and all other information all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions that are provided or used by Kymeta (“**Kymeta Materials**”);

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Products, Services, Documentation, or Kymeta Materials;

(c) disable, disassemble, decompile, attempt to derive source code or algorithms of, or otherwise reverse engineer the Products, Services, Documentation, or Kymeta Materials except and only to the extent expressly permitted by law notwithstanding this limitation;

(d) remove, delete, alter, or obscure any warranties, disclaimers, or warning labels, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Products, Services, Documentation, or Kymeta Materials; or

(e) access or use the Products, Services, Documentation, or Kymeta Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Kymeta customer), or that violates any applicable law.

8.0 CUSTOMER DATA

8.1 Customer Data. As between Customer and Kymeta, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, subject to the rights and permissions granted in Section 8.2.

8.2 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Kymeta, its subcontractors and Kymeta personnel as are necessary or useful to perform the Services; (b) to Kymeta as are necessary or useful to enforce these Terms of Sale and exercise its rights and perform its obligations hereunder; and (c) to Kymeta, its subcontractors, and Kymeta personnel for use, solely in anonymized form, to improve, maintain and support Kymeta’s products, services and internal business operations.

8.3 Personal Information. If Customer Data includes Personal Information, Kymeta will use, store, and transmit such Personal Information in accordance with law applicable to Kymeta’s collection, use, or disclosure of such Personal Information and the terms of its privacy policy, located at: <http://www.kymetacorp.com/privacy-policy/>. Customer represents that it, its affiliates, and any of its vendors, subcontractors, or agents have the legal rights and necessary consents required to collect, use, or disclose to Kymeta, or to provide Kymeta with access to,

Personal Information consistent with Customer's privacy policy and Kymeta's privacy policy. Customer, its Affiliates, and any of its vendors, subcontractors, or agents will ensure that each authorized user or other user of the Products and/or Services agrees to both Customer's and Kymeta's respective privacy policies before such users use the Products and/or Services.

9.0 LIMITED WARRANTY

9.1 **Products.** Kymeta warrants to Customer that the Products will materially conform to Kymeta's published specifications set forth in the Sales Order and the Documentation in effect as of the date of shipment and will be free from significant defects in material and workmanship for a period of twenty-four (24) months from the date of shipment ("**Warranty Period**"), provided that the Products are connected to the Services, either directly through Kymeta or through a third party provider, at all times during such Warranty Period.

9.2 **Restrictions.** The limited warranties referenced in this section do not apply if the Products (a) have been reconstructed, repaired, altered or modified (including any cosmetic alterations), except by Kymeta, (b) have not been installed, operated, repaired, used or maintained in accordance with instructions made available by Kymeta, (c) have been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (d) are acquired by Customer for beta, evaluation, testing, demonstration purposes or other circumstances for which Kymeta does not receive a payment of a purchase price or license fee; or (e) have been used with any software, hardware, or product that has not been previously approved in writing by Kymeta. Furthermore, the limited warranties referenced in this section will be immediately voided in the event of any violation of Section 2.0 or 7.2 of these Terms of Sale.

9.3 **Availability of Services.** Customer acknowledges that availability of the Services may be affected by: (a) telecommunication network activity or capacity; (b) availability of third party hosting services; (c) hardware failures; and (d) compatibility with third-party communication equipment, internet access software, or browsers not in accordance with the Software requirements. Kymeta disclaims any and all responsibility for any service interruption in connection with such activity, capacity, failure or compatibility. Customer is responsible for providing all equipment (other than the Products) and telecommunication services necessary to access the Services. Kymeta may, directly or indirectly, suspend, terminate, or otherwise deny Customer's, any authorized user's, or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) Kymeta receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Kymeta to do so; or (b) Kymeta believes, in its sole discretion, that Customer or any authorized user: (i) has failed to comply with any material term of the Terms of Sale or the EULA; (ii) has accessed or used the Services beyond the scope of the rights granted, for a purpose not authorized under the Terms of Sale or the EULA or in any manner that does not comply with any instruction or requirement of the Specifications or the Documentation; or (iii) is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities.

9.4 Disclaimer of Warranty. Except as expressly provided in this section, Kymeta hereby disclaims and Customer hereby waives all representations, conditions and warranties (whether express, implied, or statutory), including, without limitation, any warranty or condition (a) of merchantability, fitness for a particular purpose, non-infringement, title, satisfactory quality, quiet enjoyment, accuracy, or system integration, or (b) arising from any course of dealing, course of performance, or usage in the industry. To the extent an implied warranty or condition cannot be disclaimed, such warranty or condition is limited in duration to the applicable express warranty period. Kymeta does not warrant that the Products, Services, Documentation, Software, and/or data provided to Customer shall meet Customer's requirements or that the operation thereof shall be uninterrupted or error-free, or that all errors shall be corrected.

9.5 Exclusive Remedy for Defective Products. This Section 9.5 contains Customer's exclusive remedy for Products that do not conform to the warranties in this section and Kymeta's sole liability for any breach of the limited warranty set forth in Section 9.1 (a "**Defective Product**"). Customer has no right to return for repair, replacement, credit, or refund any Product except as set forth in this Section 9.5. In no event will Customer reconstruct, repair, alter, or replace any Products, in whole or in part, either itself or by or through any third party. During the Warranty Period, with respect to any allegedly Defective Product: (a) Customer will notify Kymeta, in writing, of any alleged claim or defect within fourteen (14) business days from the date Customer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period); (b) Customer must contact Kymeta to obtain a return materials authorization number before shipping the allegedly Defective Product; (c) Customer will ship, at Kymeta's expense, such allegedly Defective Product to Kymeta's facility as directed by Kymeta for inspection and testing by Kymeta; (e) if Kymeta's inspection and testing reveals, to Kymeta's reasonable satisfaction, that such Products are Defective Products and that any such defect has not been caused or contributed to by any breach of Customer of these Terms of Sale or the EULA, then Kymeta will in its sole discretion, and at its expense: (i) repair or replace such Defective Products, or (ii) credit or refund the price of such Defective Products less any applicable discounts, rebates or credits.

10.0 CONFIDENTIAL INFORMATION

10.1 "Confidential Information" means nonpublic information disclosed by one party ("**Disclosing Party**") to the other ("**Receiving Party**") in connection with these Terms of Sale, in any form, that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential by a reasonable person under the circumstances.

10.2 The Receiving Party may use the Confidential Information solely for the purpose of performing its obligations under these Terms of Sale and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose of fulfilling its obligations under these Terms of Sale. The Receiving Party shall take appropriate

measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure.

10.3 The Receiving Party shall have no obligation with respect to information that (a) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (b) is, or subsequently becomes, legally and publicly available without breach of these Terms of Sale; (c) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (d) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (e) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (i) prior written notice to the Disclosing Party of such order and (ii) the Disclosing Party prior opportunity to oppose or restrict such disclosure. Upon written demand by the Disclosing Party or upon termination of the Services, the Receiving Party shall: (A) cease using the Confidential Information, (B) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand or termination of Services, and (C) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

10.4 Each party shall retain all right, title and interest to such party's Confidential Information. No license to any intellectual property (or application for intellectual property protection) is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.

10.5 Customer shall not disclose, advertise, or publish either the existence, the subject matter, any discussions relating to any Sales Order to any third party without the prior written consent of Kymeta. Any press release, publication, advertisement or public disclosure regarding these Terms of Sale or Customer's purchase of the Products and/or the Services is subject to both the prior review and the written approval of Kymeta.

11.0 REGULATORY

Customer acknowledges and agrees that Kymeta's Products and/or Services can only be used in jurisdictions where Kymeta and/or Customer has received required governmental permits and approvals in accordance with applicable law. Customer may test the Products and/or Services on dates approved by Kymeta and with the cooperation and approval of Kymeta for such test operations, pursuant to and in accordance with applicable law and Kymeta's authority under applicable permits and approvals. In particular, Customer shall conduct test operations on a non-interference basis, shall operate in accordance with the power levels and other technical parameters identified by Kymeta pursuant to its applicable permits and approvals, shall bear responsibility for any interference caused by such test operations and hold Kymeta harmless for any damages caused by such interference, and shall afford Kymeta sufficient notice, in no event less than four weeks, prior to any test operations to ensure that Kymeta may timely notify

potentially affected parties. Kymeta, may or may not, in its sole discretion, choose to obtain additional regulatory permits, approvals, and/or certifications necessary to perform the testing of the Products and/or the Services in the United States, Europe, South America, Africa, the Middle East or any other jurisdiction or, if Kymeta chooses not to obtain such additional regulatory approvals and/or permits, Customer may be required to do so in order to conduct testing of any Products and/or Services. Customer is responsible for ensuring that any satellite connection made and maintained using the Products and/or the Services is done so in accordance with these Terms of Sale, Kymeta's permits and approvals and with all applicable laws.

12.0 TERM AND TERMINATION

These Terms of Sale shall terminate:

- (a) automatically upon expiration of the Evaluation Period;
- (b) automatically upon expiration or termination of the term as set forth in a Purchase Order issued by Customer and accepted by Kymeta; or
- (c) at such other time as the Parties mutually agree in writing, whichever is earlier.

13.0 EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

The Products, Services and related technology are subject to U.S. and local export control laws and regulations. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of Products, Services, and related technology and will obtain all required U.S. and local authorizations, permits or licenses. Customer certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of the Evaluation Period or the term of Services agreed to by the Parties.

14.0 LIMITATION AND EXCLUSION OF LIABILITY; INDEMNIFICATION.

14.1 Nothing in these Terms of Sale limits or excludes the liability of:

- (a) either party to the other for bodily injury or death resulting directly from the negligence of the other party; fraud or fraudulent misrepresentation; a breach of confidentiality obligations; or any liability that cannot be limited or excluded under applicable law.
- (b) Customer to Kymeta arising out of: Customer's breach of Sections 2.0 (Scope), 7.0 (Proprietary Rights and Software Licensing) or 11.0 (Regulatory); Customer's breach of the EULA; or any amounts due to Kymeta under these Terms of Sale or a Sales Order.

14.2 Subject to Section 14.1 above, each party's total aggregate liability is limited to the amounts of money paid to Kymeta for the Products and/or Services.

14.3 Subject to Section 14.1 above, and notwithstanding anything else in these terms of sale to the contrary, neither party will be liable for any special, incidental, indirect or consequential damages; loss of any of the following: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation; or lost or damaged data.

14.4 References in this section to (a) a “party” includes a party’s affiliates, officers, directors, employees, agents and suppliers and (b) “liability” includes liability arising from contract, tort (including negligence), under any indemnity, strict liability or otherwise, in each case even if a party has been informed of the possibility of that liability. In Section 14.3, references to “loss” refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

14.5 If a Claim (as defined below) is brought against Kymeta or its affiliates, officers, directors, employees, agents or suppliers, Customer will defend the Claim (including by paying litigation costs and reasonable attorneys’ fees) and pay any settlement Kymeta consents to or any adverse final judgment. “**Claim**” means an unaffiliated third party’s demand, suit, or other action to the extent: (a) arising from any tangible or intangible materials provided by or on behalf of Customer or any authorized user, including Kymeta’s compliance with any specifications or directions provided by or on behalf of Customer or any authorized user; (b) as alleged, it arises from the gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any authorized user, or any third party on behalf Customer or any authorized user, in connection with these Terms of Sale; or (c) arising from any breach by Customer of these Terms of Sale or the EULA.

15.0 GENERAL

15.1 **Choice of Law.** The validity, interpretation, and performance of these Terms of Sale shall be controlled by and construed under the laws of the State of Washington, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of King County, Washington shall have exclusive jurisdiction over any claim arising thereunder. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party’s intellectual property or proprietary rights.

15.2 **Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party’s reasonable control, including, without limitation, acts of nature, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party’s performance.

15.3 No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.

15.4 Assignment. Neither these Terms of Sale nor any rights or obligations under these Terms of Sale shall be assigned by a party without the other's prior written consent, which will not be unreasonably withheld or delayed. Any attempted assignment shall be void and of no effect. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under these Terms of Sale.

15.5 Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate these Terms of Sale by written notice with immediate effect to the other.

15.6 Attorneys' Fees. In any suit or proceeding relating to these Terms of Sale the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of these Terms of Sale, and shall survive expiration or termination and shall not be merged into any such judgment.

15.7 No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

15.8 Entire Agreement. These Terms of Sale constitute the entire agreement between the parties concerning the subject matter of these Terms of Sale and replace any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. These Terms of Sale may be modified only by a written document executed by the parties hereto.

15.9 Notices. All notices required or permitted under these Terms of Sale will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying two (2)-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on

the first page of these Terms of Sale, (and notices to Kymeta shall be further addressed to the Office of the General Counsel) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last invoice under these Terms of Sale was sent before notice is served. Notwithstanding the foregoing, notices regarding changes in pricing, license terms, policies or programs may be by posting on Kymetacorp.com or by e-mail.

15.10 Survival. The following sections shall survive the expiration or earlier termination of these Terms of Sale: Sections 2.0 (Scope), 6.0 (Payment), 7.0, (Proprietary Rights and Software Licensing), 8.0 (Customer Data), 9.0 (Limited Warranty), 10.0 (Confidential Information), 13.0 (Export, Re-Export, Transfer and Use Controls), 14.0 (Limitation and Exclusion of Liability), 15.0 (General) and the license to use the Products and/or Services set out in the EULA.