

# Kymeta Terms of Sale

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

## 1.0 DEFINITIONS

1.1 “**Customer**” means the entity (including distributors and End Users as the case may be) purchasing Products and/or Services from Kymeta as set forth on the applicable Quote for resale or for its own internal business purposes.

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 “**Documentation**” any manuals, instructions, training materials, technical manuals, supporting materials, Marketing Materials, or other documents or materials that Kymeta provides or makes available to, Customers, or End Users in any form or medium and that describe the functionality, components, features, or requirements of, or otherwise relate to, the Products and/or Services, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

1.4 “**End User**” means a person or entity that purchases Products or Services from any Customer (including any Subdistributor), or Kymeta directly, for its own internal use and not for sale to a third party.

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

1.6 “**Kymeta Marketing Materials**” means Marketing Materials provided to Customer by Kymeta.

1.7 “**Kymeta Materials**” means Specifications, Documentation, Kymeta’s Marks, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, or training materials that are provided or used by Kymeta or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Kymeta Systems. Kymeta Materials include any modifications to, or derivative works of, the foregoing materials. Kymeta Materials do not include any Third-Party Materials. For the avoidance of doubt, Kymeta Materials include any information, data or other content derived from Kymeta’s monitoring of Customer’s access to or use of the Services, but do not include End User Data.

1.8 “**Kymeta Systems**” means the information technology infrastructure used by or on behalf of Kymeta in providing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Kymeta or through the use of third-party services.

1.9 “**Intellectual Property**” means all intellectual property rights throughout the world, whether existing under statute or common law or equity, in force or recognized now or in the future, including: (a) copyrights, trade secrets, Marks, domain names, Patents, inventions, designs, logos and trade dress, moral rights, mask works, rights in computer information, rights of personality, publicity, and privacy, and any other intellectual property and proprietary rights; (b) any application or right to apply for any of the rights referred to in clause (a); and (c) all renewals, extensions, future equivalents, and restorations of any of the rights referred to in clauses (a) or (b), in force or effect now or in the future.

1.10 “**Law**” means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.

1.11 “**Maintenance**” means the Maintenance Contract (if any) opted for in the Quote.

1.12 “**Marketing Materials**” means, collectively, any promotional, marketing, advertising materials, collateral materials, display items, kiosk, or other materials, related to or used in connection with the promotion and sale of a party’s products or services.

1.13 **“Marks”** means the trademarks, service marks, trade dress, trade names, corporate names, proprietary logos or indicia, and other source or business identifiers of each party.

1.14 **“Patent”** means: (a) any and all patents, utility models, patent registrations, and equivalent rights (including originals, divisionals, provisionals, re-exams, continuations, continuations-in-part, extensions or reissues); (b) applications for any of the rights, registrations, or documents listed in clause (a) in all countries of the world; and (c) any other procedure or formality with respect to any of the rights, registrations, or documents listed in clauses (a) or (b) that can result in an enforceable patent right anywhere in the world.

1.15 **“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.

1.16 **“Products”** means the hardware, equipment, devices, peripherals, Software, or other items that Kymeta provides to Customer as described in a Quote. Products include but are not limited to Kymeta’s u7 and u8 Antennas and fully integrated Terminals.

1.17 **“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 Quote 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.

1.18 **“Quote”** means any proposal or order signed by authorized representatives of each of Kymeta and Customer for the purchase of Products and/or Services.

1.19 **“Services” or “Subscription Services”** means the managed broadband or cellular data connectivity service (using standard internet protocols) provided by Kymeta to Customer, utilizing a satellite-enabled connectivity and broadband or cellular network, 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 End Users or other services provided by Kymeta to Customer, including training and other professional services (pursuant to such Documentation) as set forth on the applicable Quote.

1.20 **“Software”** means the computer software programs (solely in object code form) that Kymeta provides, licenses, or otherwise 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.

1.21 **“Specifications”** means the specifications for the Products or Services set forth in the applicable Quote and the Documentation.

1.22 **“Subdistributor”** means a third party that purchases Products or Services from Customer for further resale only and does not use the Products or Services for its own internal business purposes. Subdistributor’s efforts are limited by these Terms of Sale.

1.23 **“Support”** means the Kymeta Support Contract: Essential (if any) opted for in the Quote.

1.24 **“Third Party Materials”** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Products or Services that are not proprietary of Kymeta.

1.25 **“Terminal”** means the Kymeta mobile satellite terminal incorporating the antenna, modem, low-noise block downconverter (LNBs), block upconverter (BUC), outdoor unit (ODU) and Software.

1.26 **“Updates”** means modifications, bug fixes, or updates to Software that Kymeta makes generally commercially available.

## 2.0 SCOPE

2.1 General Scope. These Terms of Sale set forth the terms and conditions for Customer’s purchase of Products and/or Services for resale to Customer’s Subdistributors or End Users, or for Customer’s (in the case of Customer being an End User) internal business use. Except as otherwise described in these Terms of Sale, Customer has no authority to make any commitments on behalf of Kymeta.

2.2 Subdistributors. If Customer uses Subdistributors: (a) before any such appointment, Customer shall provide written notice of the Subdistributors for Kymeta's advance written consent, which consent shall not be unreasonably withheld; (b) Customer shall control and monitor each Subdistributor's performance; (c) Customer shall be liable under these Terms of Sale for each Subdistributor's acts and omissions relating to these Terms of Sale as if they were Customer's own; and (d) Customer must maintain a written agreement with each Subdistributor sufficient for Customer to comply with these Terms of Sale, and that, at a minimum, is similar in form and substance to those terms and conditions set forth in these Terms of Sale with respect to confidentiality, training, marketing, license grants and protection of Kymeta's Marks, and indemnification, and insurance. Customer's delegation of any of its rights or obligations under these Terms of Sale shall not relieve it from liability for the performance of those obligations. Customer guarantees, and shall ensure and remain fully responsible for, the performance of all of its obligations and compliance with all terms and conditions of these Terms of Sale.

2.3 Government Sales. Except in the case of the Kymeta contracting entity being Kymeta Government Solutions, Customer will not resell or distribute Products or Services to any United States federal, state, local, or municipal government or any agency, branch, subdivision, or entity thereof, or any regulatory body of any kind without the express written permission of Kymeta.

### 3.0 PRICES

3.1 Prices for Products and/or Services shall be those specified in the Quote and unless otherwise expressly agreed to in writing are not subject to any special pricing or volume discounts.

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 Kymeta shall provide the applicable Products and Services as agreed upon by the parties in the applicable signed Quote. These Terms of Sale shall apply, regardless of any additional or conflicting terms on any purchase order, Quote, 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 any orders placed pursuant to the Quote.

### 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 the 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 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.

5.4 **All Sales are Final**. Kymeta does not accept returns unless (i) Kymeta shipped Products other than as specified in the Quote, (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

6.1 Payment Terms. 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 United States Dollars by check or wire transfer in accordance with the instructions provided by Kymeta. 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) 1.5 per cent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less, applied from the first day the amount is past due. 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.

6.2 Disputed Invoices. Customer must notify Kymeta in writing of any disputed invoice within 15 days of the date of receipt of such invoice. The parties will work together in good faith to resolve such dispute. Customer shall pay any undisputed portion of an applicable invoice in accordance with Section 6.1 above and Customer shall make prompt payment of any outstanding amount after the dispute is resolved. Customer will be deemed to have accepted all invoices for which Kymeta does not receive timely notification of disputes.

## 7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING

7.1 Ownership. Subject solely to the licenses expressly granted in these Terms of Sale, nothing contained herein will have any effect on either party's ownership of its Intellectual Property. All rights not expressly granted in these Terms of Sale are reserved. Without limiting the above, and except to the extent otherwise expressly provided in these Terms of Sale, nothing herein may be construed as a license to either party's Intellectual Property, expressly or by implication, estoppel, exhaustion, or otherwise. If Customer acquires any Intellectual Property in or relating to any Product or Service purchased under these Terms of Sale (including any rights in any Kymeta Marks, Kymeta Marketing Materials, derivative works, or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to Kymeta or its licensors, as the case may be, without further action by either party.

7.2 License. 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/>.

7.3 Restrictions. 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, or Kymeta Materials;

(b) in the case of End Users, 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.

## 7.4 Trademarks.

(a) License of Marks. During the Term and subject to the terms and conditions herein, each party hereby grants to the other a non-exclusive, non-transferable, non-sublicensable, royalty-free, worldwide personal license to use, publish and display the other party's Marks solely for purposes of fulfilling its obligations under these Terms of Sale, to advertise and to promote the Products, Services, and Customer's products and services. In carrying out its obligations under these Terms of Sale, each party will use the other party's Marks solely in the manner approved by the other party. Neither party will use the other party's Marks in any manner that is disparaging or that otherwise portrays the other party in a negative light. Neither party may alter, modify, or change the other party's Marks.

(b) **Ownership of Licensed Marks.** Each party acknowledges the other party's sole ownership of the other party's Marks worldwide and all associated goodwill. Nothing in these Terms of Sale or in the performance thereof, or that might otherwise be implied by Law, will operate to grant a party any right, title, or interest in or to the other party's Marks other than as specified in the limited license grant herein. All goodwill arising from each party's use of the other party's Marks will inure solely to the benefit of the other party. Each party hereby assigns and will assign in the future to the other party all rights it may acquire by operation of law or otherwise in the other party's Marks, including all applications or registrations therefore, along with the goodwill associated therewith.

(c) **Protection of Licensed Marks.** Each party will assist the other party in protecting and maintaining the other party's rights in its Marks worldwide, including preparation and execution of documents necessary to register the Marks or record these Terms of Sale. Each party will have the sole right to and in its sole discretion may commence, prosecute or defend, and control any action concerning its Mark. Neither party will contest the validity of, by act or omission jeopardize, or take any action inconsistent with, the other party's rights or goodwill in the other party's Mark in any country, including attempted registration of any of the other party's Mark, or use or attempted registration of any mark confusingly similar thereto.

(d) **Quality Control of Licensed Marks.** Each party will supply the other party with suitable specimens of its Marks for use as contemplated. Each party will fully correct and remedy any deficiencies in its use of the other party's Marks, upon reasonable notice from the other party.

7.5 **Feedback.** If Customer gives Kymeta Feedback, Customer is deemed to have also given without charge to Kymeta, the right to use, share, and commercialize the Feedback in any way and for any purpose, without regard to Intellectual Property or otherwise. "**Feedback**" means ideas, suggestions, comments, input, or know-how, in any form, that Customer provides to Kymeta in relation to Kymeta's products or services. Feedback does not include sales forecasts or financial results.

## 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 this Section.

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; (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; and (d) to Kymeta, its subcontractors, and Kymeta personnel as are necessary to comply with any applicable laws.

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/>. Notwithstanding anything to the contrary each party will comply with all applicable country specific data protection Laws, including but not limited to the Directive 95/46/EC of the European Parliament and Regulation 2016/679 of the European Parliament and of the Council, and any implementation thereof in national law, and Customer will ensure compliance with such laws by its Subdistributors and End Users. 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 WARRANTY

9.1 **Products.** Kymeta warrants to End User that the Products will materially conform to Kymeta's published Specifications set forth in the Quote and the applicable Documentation in effect as of the date of shipment and will be free from significant defects in material and workmanship for the periods set forth below from the date of the applicable Product shipment ("**Standard 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.

(a) The Warranty Period for the u7 Products shall be 24 months.

(b) The Warranty Period for the u8 Products shall be 12 months.

Kymeta may offer and End Users may elect an option to purchase extended warranty coverage for an additional one-year at Kymeta's then-current standard pricing ("**Extended Warranty Period**" and collectively with the Standard Warranty Period, the "**Warranty Period**"). No warranty is extended to Customers, other than End Users, under these Terms of Sale. In the case of Distributors, Distributor will not provide any warranty regarding any Product other than the Warranty described in this Section 9.1.

**9.2 Limitations/Restrictions.** The warranties referenced in this section do not apply if the Products (a) have been serviced, 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 abuse, misuse, neglect, accident, improper testing, improper installation, improper storage,, improper handling, abnormal or unusual physical or electrical stress or environmental conditions, or use contrary to any instructions issued by Kymeta ; (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 warranties referenced in this section will be immediately voided in the event of any violation of Section 2.0 or 7.3 of these Terms of Sale.

**9.3 Availability of Services.** Customer and End User 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 End 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, End User 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/End User 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/End User shall meet Customer's or End User'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/End User'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 warranty set forth in Section 9.1 (a "**Defective Product**"). Customer/End User 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/End User 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/End User will notify Kymeta, in writing, of any alleged claim or defect within fourteen (14) business days from the date Customer/End User 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/End User must contact Kymeta to obtain a return materials authorization number before shipping the allegedly Defective Product; (c) Customer/End User 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/End User 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.

**9.6 Warranty for Third Party Materials.** Customer/End User acknowledges and agrees that Products purchased by Customer/End User under these Terms of Sale or the applicable Quote may contain, be contained in, incorporated into, attached to or packaged with Third Party Materials, such as hardware, software, or other products manufactured by a third party. Third Party products or Third-Party Materials are not covered by the Warranty in Section 9.1. For the avoidance of doubt, Kymeta makes no representations or warranties regarding any Third-Party products or Third-Party Materials.

## 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 any Quote or 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 will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature and 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, (ii) the Disclosing Party prior opportunity to oppose or restrict such disclosure, (iii) discloses only such information as is required by the government agency, and (iv) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed. 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 or destroy the Confidential Information and all copies, notes or extracts thereof 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 Receiving Party will notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of these Terms of Sale. Receiving Party will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

10.6 Receiving Party acknowledges that a breach of its obligations under this Section 10 could cause irreparable harm to Disclosing Party as to which monetary damages may be difficult to ascertain or an inadequate remedy. Receiving Party agrees that Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of these Terms of Sale.

10.7 Customer shall not disclose, advertise, or publish either the existence, the subject matter, any discussions relating to any Quote or these Terms of Sale 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

Except as otherwise expressly agreed in writing, if at any time during the Term any notification, registration, or approval is required for giving legal effect in any applicable jurisdiction to these Terms of Sale or the transactions contemplated hereunder, Customer shall: (a) immediately take whatever steps may be necessary to properly notify, register or obtain approval; (b) be responsible for any charges incurred in connection with notifying, registering, or obtaining this approval; and (c) keep Kymeta currently informed of its efforts regarding this Section 11. Kymeta shall not be obligated to ship any Products or other materials to Customer or provide access to Services under these Terms of Sale until Customer has provided Kymeta with satisfactory evidence that this approval, notification, or registration is not required or that it has been obtained. 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, applicable permits, approvals and Laws.

## 12.0 TERM AND TERMINATION

These Terms of Sale shall terminate:

- (a) automatically upon expiration or termination of the term as set forth in a Purchase Order issued by Customer and accepted by Kymeta; or
- (b) 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 may contain technical data (collectively, "Regulated Items") and may be subject to U.S. and local export control Laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Customer will not, and will not permit any customers, End Users, or third parties to, directly or indirectly, export, reexport, or release any Regulated Items to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Items is prohibited by applicable Law, regulation, or rule. Customer shall comply with such Laws and regulations governing use, export, re-export, and transfer of Regulated Items and will obtain all required U.S. and local authorizations, permits or licenses prior to exporting, reexporting, or releasing any Regulated Items. 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. Customer will be responsible for any breach of this Section 13 by its, and its successors' and permitted assigns', affiliates, employees, officers, directors, partners, customers, agents, distributors, resellers, vendors, or End Users. The export obligations under this clause shall survive the expiration or termination of these Terms of Sale agreed to by the Parties.

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 any other information required under these Terms of Sale or requested by Kymeta, including but not limited to completing any End-Use/End-User Certificate form<sup>1</sup> as may be required by Kymeta from time to time.

### 14. Customer Acting as A Distributor.

Any Customer acting as a distributor purchasing Products and Services under these Terms of Sale for the purpose of reselling such Products and Services to their Subdistributors and End Users ("Distributor") shall comply with the terms of this Section 14.

#### 14.1 Marketing, Promotion of Products and Services, & Identification of End Users.

(a) **Customer Marketing Responsibilities.** Any Customer (acting as a distributor) ("Distributor") shall, at its own expense: (a) use its best commercial efforts to advertise, market, and promote the Products and Services consistent with good business ethics and in a manner that reflects favorably upon Kymeta, in each case using best efforts to maximize the sales volume of the Products and Services; (b) establish and maintain a competent and adequately trained and skilled sales and marketing organization, independent sales representatives, and a distribution organization and facilities sufficient for the sale of Services and the sale and shipment of Products to Subdistributors and End Users; and (c) observe all of Kymeta's reasonable directions.

(b) **Marketing Support.** During the Term, Kymeta shall provide information and support that may be reasonably requested by Distributor regarding the marketing, advertising, promotion, and sale of the Products and Services that Distributor is authorized to sell under these Terms of Sale.

(c) **Marketing Materials.** Each Party may reproduce, display, use, and distribute, solely in connection with the performance of its obligations under these Terms of Sale, any Marketing Materials made available to it by the other Party. Each Party agrees that it shall not, without the prior written consent of the other Party in each instance, use the other Party's Marks in advertising, publicity or otherwise. Each Party must submit any Marketing Materials it produces that includes or references the other Party's Marks, products, or services to the other Party for the other party's review and written approval prior to each use. The approving Party shall use commercially reasonable efforts to notify the submitting party in writing (for clarity, email notification is acceptable to fulfill this notification obligation set forth in Section 17.15) of acceptance or rejection within ten (10) days for each submission. Failure to accept or reject a submission within ten (10) days following receipt shall be deemed a rejection of that submission. Once a Party has approved

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<sup>1</sup> Kymeta will require an End-Use/End-User Certificate for any transaction where the Products and Services are to be shipped to, or billed to, countries on the U.S. Department of Commerce Country Group D list as those countries are identified by the BIS, which list may be modified from time to time (available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2255-supplement-no-1-to-part-740-country-groups-1>). Kymeta will not book an Order until a complete and signed End-Use/End-User Certificate is provided to Kymeta.

specific Marketing Materials for any particular use or event, the same or substantially similar Marketing Materials (with no material variation) shall be deemed approved for any substantially similar use or event.

#### 14.2 Resale of Products and Services.

(a) Resale. Distributor is responsible for all credit risks regarding, and collecting payment for, all Products and Services sold as part of a Distributor direct sale, whether or not Distributor has made full payment to Kymeta for the Products and Services. The inability of Distributor to collect the purchase price for any Product or Service does not affect Distributor's obligation to pay Kymeta for any Product or Service. Distributor may sell Products incorporated into its own products and services, either alone or as a bundle. Distributor shall consult with Kymeta on all Product and Services bundles.

(b) Maximum Retail Price. Distributor shall be entitled to establish its own retail prices for the Products and Services, provided that, Distributor shall be prohibited from selling the Products and Services at a retail price higher than the MSRP specified in the Quote. Any sale by Distributor above the MSRP specified in the Quote shall constitute a material breach of these Terms of Sale, and Kymeta shall be entitled to terminate these Terms of Sale immediately for cause.

#### 14.3 Other Distributor Responsibilities.

(a) Authority to Perform. Distributor shall not disparage the Products, Kymeta, or any of Kymeta's Marks or Kymeta's Marketing Materials in any way, or engage in any illegal or unethical business practices in promoting, marketing, distributing, or supporting the Products and Services. Distributor shall, at its own expense, obtain and maintain all required certifications, credentials, licenses, and permits necessary to conduct business in accordance with these Terms of Sale.

(b) End User Privacy. For clarity, with respect to End Users to which it provides access to Products or Services, Distributor shall comply with all applicable country-specific data protection Laws, including but not limited to: (1) the Directive 95/46/EC of the European Parliament and Regulation 2016/679 of the European Parliament and of the Council, and any implementation thereof in national Law; (2) the provisions of the California Consumer Protection Act, California Civil Code §§ 1798.100, et seq.; (3) any applicable security breach notification laws; (4) any other applicable laws requiring the protection of Personal Information; and (5) in compliance with the Payment Card Industry Association Security Standards, to the extent Distributor has access to any End User payment card information. Distributor shall provide End Users a privacy policy which describe how it collects, stores, and uses Personal Information of End Users, consistent with Law. Distributor represents and warrants that it has obtained all necessary consents from End Users (including, where applicable, by requiring Subdistributors to obtain all necessary consents) to collect, use and process Personal Information. Distributor shall provide Personal Information to Kymeta only if and to the extent (a) requested by Kymeta in writing or (b) necessary for Kymeta to provide to Distributor Products or Services. Distributor, Subdistributors, and their affiliates, vendors, subcontractors, or agents shall use Personal Information solely to provide the Products or Services to End Users, and for no other purpose. If Distributor has End Users in the European Economic area, the Parties agree to be bound by the respective legal obligations with respect to the Personal Information of individuals in the European Economic Area.

(c) Training. Kymeta may require Distributor and its personnel to participate in and complete training on the Products and Services at Distributors expense.

(d) Installation Services. Distributor shall provide Installation Services for all Products and Services sold through Distributor Direct Sales, unless the End User affirmatively elects to utilize a third-party installer acceptable to Kymeta. Where Distributor is performing Installation Services, Distributor agrees to indemnify, defend, and hold harmless Kymeta and its affiliates against any and all third-party claims involving, related to, or flowing from the failure by Distributor to install the equipment in accordance with applicable standards, Specifications, and Documentation.

(e) Distributor Conduct. Distributor shall limit its claims and representations concerning the Products and Services to those made by Kymeta in its published literature for the Products and shall be responsible for any claims or representations concerning the Products or Services in excess of or inconsistent with such claims of Kymeta. Distributor shall at all times conduct its activities in a professional and competent manner. Without limitation, Distributor shall: (a) promote the Products and Subscription Services in a manner that maintains the good name and reputation of both Kymeta and its Products and Subscription Services; and (b) not engage in any unfair, competitive, misleading, or deceptive practices with respect to Kymeta, Kymeta's Marks, Kymeta's Marketing Materials, or the Products or Services with respect to its business activities and practices.

#### 15.0 **LIMITATION AND EXCLUSION OF LIABILITY.**

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

(a) either party to the other for fraud or fraudulent misrepresentation; a breach of confidentiality obligations; either party's infringement, misappropriation, or violation of the other party's Intellectual Property; 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), 11.0 (Regulatory) or 13.0 (Export, Re-export, Transfer & Use Controls); Customer's breach of the EULA; or any amounts due to Kymeta under these Terms of Sale or a Quote.

15.2 Subject to Section 15.1 above, each party's total aggregate liability is limited to direct damages incurred in reasonable reliance, not to exceed the actual amounts of money paid to Kymeta for the Products and/or Services under an applicable Quote or Purchase Order.

15.3 Subject to Section 15.1 above, and notwithstanding anything else in these Terms of Sale to the contrary, neither party will be liable for any special, incidental, indirect, exemplary, punitive, 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 whether or not such damage or loss was known or reasonably foreseeable by the other party and regardless of whether liability is based on breach of contract or warranty, tort, strict liability, or otherwise.

15.4 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 15.3, 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.

## 16.0 INDEMNIFICATION

16.1 Obligation. If a Claim is brought against a party, or its subsidiaries, affiliates, agents, licensees, or successors, or any agents, directors, officers, or employees of any of them (all, collectively, "**Defendant**"), the other party ("**Respondent**") will defend the Claim (including by paying litigation costs and reasonable attorneys' fees) and pay any settlement Respondent reasonably consents to or any adverse final judgment subject to the following limitations. "**Claim**" means an unaffiliated third party's demand, suit, or other action to the extent: (a) it alleges bodily injury, death or damage to real or tangible, personal property caused by Respondent's gross negligence or willful misconduct; (b) solely for Kymeta as Respondent, it alleges the Products, Services, Deliverables, or Kymeta Materials, unmodified from the form provided by Kymeta and uncombined with anything else, when used by an End User as permitted under these Terms of Sale, infringes claimant's Intellectual Property; (c) solely for Customer as Respondent, it alleges the Marketing Materials created by or on behalf of Customer, the Customer Marks, or Customer's products, services or any other material provided by Customer under these Terms of Sale, unmodified from the form provided by Customer and uncombined with anything else, infringes claimant's Intellectual Property; (d) solely for Customer as Respondent, it alleges or relates to any grossly negligent or willful act or omission of Customer or its personnel in connection with the performance of its obligations under these Terms of Sale; or (e) solely for Customer as Respondent, it alleges that Customer breached its agreement with a third party as a result of or in connection with entering into, performing under or terminating these Terms of Sale.

16.2 Procedure. Defendant: (a) will promptly notify Respondent of any Claim and permit Respondent, using counsel of its reasonable choice, to answer and defend; (b) at Respondent's reasonable request and expense, will assist in the defense and provide non-confidential information; and (c) at its expense, may participate in the defense with separate counsel of its choosing. Respondent is not responsible for settlements it does not consent to and will not settle Claims under this Section 15 without Defendant's consent (with both parties' consent not unreasonably withheld). Neither party will stipulate, acknowledge, or admit fault or liability on the other's part without the other's prior, written consent. Respondent will not publicize any settlement without Defendant's prior, written consent.

16.3 Remedies. If any Product, Service, Deliverable or any Kymeta Materials provided to Customer is alleged to infringe and Kymeta may become liable, Kymeta may, at its sole option and expense and without obligation: (a) obtain the right for Customers or End Users to continue using such Product, Service, Deliverable or any Kymeta Materials; (b) replace or modify such Product, Service, Deliverable or Kymeta Materials to make it non-infringing, so long as the replacement or modification is functionally equivalent or (c) if (a) and (b) are not commercially reasonable, require Customer return the infringing Product or materials and refund the amounts paid for such Product or materials, based on the date the claim arose, and prorated over a 3-year period beginning on the date of delivery of the Product or materials. THIS SECTION 15 SETS FORTH CUSTOMER'S SOLE REMEDIES AND KYMETA'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE PRODUCT, SERVICES AND KYMETA MATERIALS INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY.

16.4 Exclusions. Kymeta has no obligation under this Section 15 for: (a) claims or awards arising out of or based on the value of: (i) anything not provided by Kymeta; (ii) Third Party Materials; (iii) use or distribution of any Product or Service other than as expressly permitted by these Terms of Sale; (iv) modification of any Product or Service by anyone other than Kymeta or combination with any other product or service other than as authorized by Kymeta; (v) use of a Product or Service after Kymeta notified Customer to cease use due to a third-party claim; (vi) failure to timely implement any modifications, upgrades, replacements, or enhancements made

available to Customer or End User by or on behalf of Kymeta; or (vii) Customer's marketing, advertising, promotion, or sale of a Product in any manner not otherwise authorized under these Terms of Sale; or (b) any claim (e.g., a counterclaim) made in response to a suit or proceeding first filed by Customer.

## 17.0 GENERAL

### 17.1 Maintenance & Support.

(a) The Maintenance Contract includes one full year of the following items: Warranty support, software updates and maintenance, and access to both the Kymeta Partner Portal and Kymeta Academy (for online training). Software Updates are available via over-the-air (OTA) updates or secure file transfer. The Maintenance Contract may be updated from time to time and made available by Kymeta.

(b) The Support Contract provides one full year of the following items: 24x7x365 live customer support, a 250 MB satellite data allotment per month, and infrastructure support with monthly service fees (hub, MVNO, SD-WAN, and Azure). The Support Contract may be updated from time to time and made available by Kymeta.

17.2 Data Service Plans. If Customer orders any Data Service Plan (as defined in the Quote) the Kymeta Data Service Plan Addendum will control with regards to such plan, including any auto-renewal and early termination fees in Section 5.3 of the Kymeta Data Service Plan Addendum, as if fully set forth in these Terms of Sale.

17.3 Insurance. During the term of these Terms of Sale and for a period of three (3) years thereafter, each Party shall, at its own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in a sum no less than \$2,000,000 U.S. dollars in the aggregate. The policies described above shall be primary and not contributory with any coverage maintained by the insured Party. All deductibles and premiums for such insurance are the insured Party's responsibility. Upon request, the insured Party shall furnish the benefitting Party with evidence that all premiums payable in respect of such insurance are paid up to a date that is within ten (10) days after such Party's request. This Section shall not apply to Customers acting as End Users.

17.4 Audit. Customers acting as Distributors shall maintain complete and accurate records related to its performance under these Terms of Sale. During the Term and for three (3) years after expiration or termination of these Terms of Sale, Kymeta has the right, upon reasonable prior notice and during normal business hours, to periodically examine Distributor's books and records to verify compliance with these Terms of Sale.

17.5 Compliance with Law. The parties agree to comply with and provide necessary training to its employees regarding all applicable Laws, including but not limited to the Export and Regulatory Control Laws expressed in these Terms of Sale and all Laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, and the U.S. Foreign Corrupt Practices Act.

17.6 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.

17.7 Dispute Resolution. The Parties shall first attempt in good faith to resolve any dispute, controversy or claim arising out of these Terms of Sale ("**Dispute**") by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) days after one Party provides written notice to the other Party of such Dispute ("**Dispute Notice**"), either Party may, by written notice to the other Party ("**Escalation Notice**"), refer such Dispute to the executives of each Party. If the executives cannot resolve any Dispute during the time period ending thirty (30) days after the date of the Escalation Notice, either Party may pursue all applicable rights and remedies at law or in equity, subject to the terms of these Terms of Sale.

17.8 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.

17.9 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.

17.10 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, except that Kymeta, upon written notice to Customer, may assign to an affiliate or any successor as part of a merger or acquisition of all or substantially all of its assets. Any unpermitted 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.

17.11 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.

17.12 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.

17.13 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.

17.14 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.

17.15 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.

17.16 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), 15.0 (Limitation and Exclusion of Liability), 16.0 (Indemnification), 17.0 (General) and the license to use the Products and/or Services set out in the EULA.