

1. DEFINITIONS. "Customer" means the party purchasing goods or services pursuant to these Terms of Sale ("Terms"). "Aqua-Metric" means Aqua-Metric Sales Company, a subsidiary of Thirkettle Corporation. "Deliverables" and "Products" means the goods and/or services sold or otherwise provided pursuant to this Agreement. "Manufacturer" refers to Sensus Inc. unless otherwise stated. Software licenses are provided solely through a separate software license agreement.
2. CONTRACT OF SALE. All Deliverables offered for sale are subject to the prices and other terms specified in (i) an applicable Aqua-Metric quotation or proposal and (ii) the Terms defined herein (collectively, the "Proposal"), all of which are subject to the correction of clerical errors. A Customer's purchase order or similar writing shall constitute an acceptance of the offer to sell; however, any inconsistent, additional or different terms to the Proposal contained in a Customer's request for quotation or purchase order (collectively, "Additional Terms") are hereby objected to and rejected by Aqua-Metric. Such Additional Terms will not become part of the contract of sale unless accepted by Aqua-Metric in a writing.
3. PROPOSALS AND QUOTATIONS. Proposals and quotations are inclusive of only the Deliverables included in a formal Aqua-Metric quotation form. Proposals and quotations will remain valid for a period of thirty (30) days unless otherwise noted. All pricing is subject to changes based on the manufacturer's suggested retail price. Any incidental product, materials, and/or labor required but not included will be subject to additional costs to the Customer. AQUA-METRIC MAKES NO GUARANTEE, EITHER EXPRESSED OR IMPLIED, THAT PROPOSAL OR QUOTED PRICING IS ALL-INCLUSIVE.
4. INVOICES. Unless otherwise agreed upon in writing between Aqua-Metric and Customer, Aqua-Metric shall invoice Customer for 1) product(s) shipped within fifteen (15) days of shipment; 2) software within fifteen (15) days after successful installation of software on Customer owned device(s); 3) implementation and support services within fifteen (15) days of completion of service; or 4) annual subscription services as defined in Section 6 within fifteen (15) days of successful installation and not less than thirty (30) days in advance of subscription anniversary date.
5. ANNUAL SUBSCRIPTION SERVICES. Annual Subscriptions Services are defined as recurring fees or cost of services required to operate, maintain, or support Customer's product and/or software; including but not limited to Aqua-Metric Annual Support, Software-as-a-Service, Server/Data Hosting, or any fee requiring a recurring commitment. Unless otherwise agreed upon in writing between Aqua-Metric and Customer, annual subscription services will automatically renew upon the anniversary date of the first invoice containing annual subscription services and each subsequent year annually thereafter unless canceled by Customer in writing prior to sixty (60) days of subscription renewal. Annual subscription services will be subject to an automatic annual increase of three percent (3%) of the previous installment.
6. TAXES. All prices quoted are exclusive of federal, state and municipal taxes. Customer shall be liable for all sales, use, and other taxes (whether local, state or federal) imposed on this Agreement or on the Deliverables. If Customer is exempt from tax, Customer is required to provide a tax exemption form prior to invoicing.
7. PAYMENT TERMS. Customer shall pay all invoices in US Dollars within thirty (30) days of the invoice date. Aqua-Metric reserves the right to establish credit limits for Customer and may require full or partial payment prior to provisioning of any Deliverables. All payments shall be made via credit card (VISA or MasterCard), check or electronic payment according to instructions provided by Aqua-Metric. The Customer must notify Aqua-Metric, in writing, within seven (7) days of receipt of an invoice if the Customer disputes such invoice. In the absence of such notice the Customer shall not be entitled to dispute an invoice. Save for any invoices disputed in good faith in accordance with the previous sentence, if the Customer does not pay within the time provided in this Agreement, the amount due shall bear interest at the lower of (i) one and a half percent (1.5%) per month up to a maximum of eighteen percent (18%) per year; or (ii) the highest rate permitted by applicable law. Should Customer become delinquent in payment of sums due hereunder, Aqua-Metric shall not be obligated to continue performance.
8. TITLE. Unless agreed upon in writing between Aqua-Metric and Customer, Customer shall assume title of deliverables from the date and time of product(s) shipment.
9. PACKAGING. Aqua-Metric reserves the right to select the manner in which Deliverables are packaged. Quoted prices include standard packaging. Special requirements for packaging will be subject to additional charges.
10. SHIPPING AND HANDLING. All stock Products and Materials will be shipped Freight on Board (FOB) Destination. Single orders exceeding \$10,000 will be shipped FOB Freight Allowed unless otherwise specified and agreed upon in writing. Aqua-Metric will ship all Products on prepaid ground transportation. Expedited shipments, such as Next Day or Second Day, will be at the Customers expense unless otherwise agreed upon by Aqua-Metric. All applicable Shipping and Handling charges will be included with the final invoice to the Customer. Aqua-Metric does not guarantee and therefore will not be liable for any delays in shipment.
11. FREIGHT. Aqua-Metric shall ship oversized Product(s) or bulk orders on standard Less-Than-Truckload ("LTL") freight carriers when applicable. The Customer is required to provide the necessary equipment required (i.e. loading dock, fork lift, pallet jack, etc.) to unload the shipment upon arrival. If the Customer does not have access to equipment necessary to unload the Product(s), Customer must inform Aqua-Metric in advance and prior to shipment. Customer will be responsible for any additional cost(s) or fee(s) incurred for special handling requirements.
12. FREIGHT ALLOWANCE. Freight allowance is only applicable to single orders shipped complete. Partial shipments must be specified in writing at the time of order placement. Aqua-Metric reserves the right to refuse freight allowance and/or bill partial freight costs on final invoice.
13. LOSS OR DAMAGE CLAIMS. The Customer is responsible for reporting lost or damaged deliverables as a result of improper packaging and/or handling to Aqua-Metric within fifteen (15) business days. Claims will become void if made more than fifteen (15) business days after the product has left Aqua-Metric facilities. Damaged product(s) will be returned to Aqua-Metric for inspection. Aqua-Metric reserves the right to repair or replace product(s) damaged in shipment.
14. AMENDMENTS OR CANCELLATIONS. Orders submitted to Aqua-Metric must be canceled or amended by Customer prior to the shipment of Deliverables. Aqua-Metric reserves the right to invoice shipping charges for orders cancelled after deliverables shipped.
15. RETURNS. No Deliverables may be returned for refund without the prior written authorization of Aqua-Metric. Aqua-Metric reserves the right to refund the cost of deliverables less a Restocking Fee and/or shipping and handling charges upon receipt of return product. Refunds will be processed and issued within thirty (30) days from the receipt of the returned Product(s). Authorized return shipments must be returned in "like-new" condition to Aqua-Metric's designated receiving point, must be shipped in suitable packaging, must be accompanied by a packing slip, including Aqua-Metric's Return Authorization Number, and must have transportation charges prepaid. All returned Product(s) will be inspected upon delivery for any indication of use or damage. Customer will be responsible for returning the Product(s) to Aqua-Metric's designated distribution warehouse and any cost(s) incurred to repack and/or shipping carrier fees. Customer will be responsible for any damages incurred during shipment with exception to the terms detailed in Damage Claims herein. Aqua-Metric reserves the right to refuse Product(s) Refunds or Credits that have been installed, used, or otherwise returned in any condition other than New. Aqua-Metric reserves the right to deduct an adequate service charge to cover all inspection, testing and handling from any refund.
16. RESTOCKING FEE. Return Product(s) are subject to a twenty-five percent (25%) restocking fee and special order Product(s), including but not limited to: meter reading equipment, infrastructure, ActPaks, or any Product(s) requiring a unique configuration, are subject to fifty percent (50%) restocking fee.
17. WARRANTIES. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND SOFTWARE ARE PROVIDED BY AQUA-METRIC ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
18. OBSOLESCENCE. Aqua-Metric shall not be held liable for planned or unplanned obsolescence of product(s), parts, or software discontinued by any manufacturer.

19. LIMITATIONS. Unless otherwise expressly provided herein, neither Aqua-Metric nor any of its service providers, licensors, employees or agents warrant that the operation of the Services will be uninterrupted or error free. Aqua-Metric will not be responsible for any damages that Customer may suffer arising out of use, or inability to use, the Services.
20. RETURN MATERIAL AUTHORIZATION. Product(s) returned for Warranty within the limitations defined by the Manufacturer will be returned directly to the Manufacturer unless otherwise instructed by Aqua-Metric. Customer shall submit a list of defective items with Serial Numbers and or Identification Numbers required to identify the product in an Excel format to RMA-California@aquametric.com; RMA-Texas@aquametric.com; or RMA-Louisiana@aquametric.com. Aqua-Metric will generate a Return Material Authorization form for the Customer to include with the Product(s) shipment to the Manufacturer. Customer will be responsible for any cost(s) incurred to return the Product(s) to the Manufacturer for warranty concerns.
21. FORCE MAJEURE. If Aqua-Metric becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. "Force Majeure" means an event beyond the reasonable control of Aqua-Metric, including without limit acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, immigration, unavailability of component parts of any Deliverables provided hereunder, acts of public enemies, border disputes, border disruptions, delivery vehicle impound, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosions.
22. LIMITATION OF LIABILITY.
- (a) AQUA-METRIC'S AGGREGATE LIABILITY IN ANY AND ALL CAUSES OF ACTION ARISING UNDER, OUT OF OR IN RELATION TO THIS AGREEMENT, ITS NEGOTIATION, PERFORMANCE, BREACH OR TERMINATION (COLLECTIVELY "CAUSES OF ACTION") SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO AQUA-METRIC UNDER THIS AGREEMENT. THIS IS SO WHETHER THE CAUSES OF ACTION ARE IN TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY, IN CONTRACT, UNDER STATUTE, OR OTHERWISE.
- (b) AS A SEPARATE AND INDEPENDENT LIMITATION ON LIABILITY, AQUA-METRIC'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES. AQUA-METRIC SHALL NOT BE LIABLE FOR: (I) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; NOR (II) ANY REVENUE OR PROFITS LOST BY CUSTOMER OR ITS AFFILIATES FROM ANY END USER IRRESPECTIVE OF WHETHER SUCH LOST REVENUE OR PROFITS IS CATEGORIZED AS DIRECT DAMAGES OR OTHERWISE; NOR (III) ANY IN/OUT COSTS; NOR (IV) CLAIMS MADE BY A THIRD PARTY; NOR (V) MANUAL METER READ COSTS AND EXPENSES. "IN/OUT COSTS" MEANS ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN TRANSPORTING GOODS BETWEEN ITS WAREHOUSE AND ITS END USER'S PREMISES AND ANY COSTS AND EXPENSES INCURRED BY CUSTOMER IN INSTALLING, UNINSTALLING AND REMOVING GOODS. "END USER" MEANS ANY END USER OF ELECTRICITY/WATER/GAS THAT PAYS CUSTOMER FOR THE CONSUMPTION OF ELECTRICITY/WATER/GAS, AS APPLICABLE.
- (c) The limitations on liability set forth in this Agreement are fundamental inducements to Aqua-Metric entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give Aqua-Metric the maximum protection permitted under law.
- (d) To the maximum extent permitted by law, no Cause of Action may be instituted by Customer against Aqua-Metric more than TWELVE (12) MONTHS after the Cause of Action first arose. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.
- (e) If Customer is not the sole end user and ultimate owner of the Deliverables, then Customer shall ensure by its contract with the end user and ultimate owner (collectively, "Owner") that Aqua-Metric is given the benefit of the exclusions and limitations set out in these Terms. Customer agrees to indemnify, defend, and hold harmless Aqua-Metric from and against all Losses (defined below) alleged by any Owner to the extent that Aqua-Metric would not be liable to Customer under these Terms if the claim had been made by Customer.
23. INDEMNIFICATION. Customer agrees to defend, indemnify and hold Aqua-Metric harmless from any and all losses, costs, fines, penalties, damages and other amounts (including reasonable attorney fees) incurred by, assessed against or imposed on Aqua-Metric arising from or in connection with any and all third party suits, claims, actions or demands (a "Claim"): (i) for personal injuries, death or damage to tangible personal and real property caused by the negligence or willful misconduct of Customer, its employees, contractors or agents other than Aqua-Metric; (ii) relating to or arising out of Customer's failure to comply with applicable law; and (iii) relating to or arising out of Customer's breach of its confidentiality obligations hereunder.
24. CONFIDENTIAL INFORMATION. Each party shall hold the other party's Confidential Information in confidence and shall not disclose such Confidential Information to third parties other than to consultants or contractors, subject to similar terms of confidentiality, when disclosure is necessary for the purposes set forth herein, nor use the other party's Confidential Information for any purpose other than the purposes set forth under this Agreement. The foregoing restrictions on disclosure shall not apply to information which is: (i) already known by the recipient, (ii) becomes, through no act or fault of the recipient, publicly known, (iii) received by recipient from a third party without a restriction on disclosure or use, (iv) independently developed by recipient without reference to the other party's Confidential Information, or (v) is a public record under applicable laws, subject to the terms of this Section. The Customer will maintain the confidentiality of all Aqua-Metric Confidential Information, and Aqua-Metric will maintain the confidentiality of all Customer Confidential Information, with each party taking all reasonable precautions to protect the same, at a minimum taking those precautions used to protect its own Confidential Information from unauthorized use or disclosure.
25. ASSIGNMENT. Customer may not assign, transfer or delegate this Agreement or any part of Customer's rights or duties without prior written consent of Aqua-Metric. Any attempted assignment in violation of this section shall be null and void.
26. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles. Any and all disputes arising under, out of, or in relation to this Agreement or its performance ("Disputes") shall first be resolved by the Parties attempting mediation in California. If the Dispute is not resolved within sixty (60) days of the commencement of the mediation, it shall be litigated in the state or federal courts located in the State of California. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PARTIES AGREE TO A BENCH TRIAL AND THAT THERE SHALL BE NO JURY IN ANY DISPUTES.
27. COMPLIANCE WITH LAWS. Customer shall comply with all applicable laws and regulations, as set forth at the time of acceptance and as may be amended, changed, or supplemented. Customer shall not take any action or permit the taking of any action by a third party, which may render Aqua-Metric liable for a violation of applicable laws. Customer will perform its obligations under this Agreement in a manner that complies with all Laws applicable to Customer's business, activities, and facilities. "Laws" shall include and refer to any and all federal (national), state, provincial, municipal or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, and any and all directives of regional legislative and regulatory bodies and implementing legislation, as well as rules and regulations of any self-regulatory organization by which any party may be bound.
28. SEVERABILITY. In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
29. NON-WAIVER. Failure or delay of Aqua-Metric to exercise a right or power under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.