

Terms and Conditions

1. Agreement: These Terms and Conditions constitute a binding contract between the Customer and ChemDAQ Inc. (ChemDAQ) and are referred to herein as either the "Terms and Conditions" or this "Agreement". Customer expressly accepts these Terms and Conditions by making a purchase from or placing an order with ChemDAQ or its authorized agents, otherwise requesting products (the "Products") or engaging ChemDAQ or its authorized agents to perform or procure any Services. These Terms and Conditions are subject to change without prior notice, except that for customers with a fixed term contract, the Terms and Conditions posted on the ChemDAQ website at the time Customer places an order, signs a Statement of Work or renews a contract will constitute the agreement for the term of that agreement, unless otherwise agreed in writing by ChemDAQ and Customer.
2. Subject of Agreement. For purposes of this agreement, the Products include the components of a gas detection monitor system, emissions monitoring system, and any other product that ChemDAQ may offer for sale or lease. In addition, Services may be provided related to the installation, calibration, maintenance and repair of the Products and user training. Note the sensors are not included in the purchase of the system. For the purposes of this agreement, the term 'sensor' applies to both a gas sensor and a sensor module that contains one or more gas sensors.
3. Taxes: All sales taxes, tariffs, and other governmental charges shall be paid by Customer and are Customer's responsibility, except as limited by law.

Gas Monitoring System

4. Payment: For purchase of a gas monitor or gas monitoring system, Customer agrees to pay 50 % of the purchase price on placement of the purchase order and the remaining balance within 30 days of shipment of the gas monitor or system by ChemDAQ, unless a different payment schedule is agreed to.
5. Delivery of System: Customer and ChemDAQ will agree on the delivery and installation dates. ChemDAQ will arrange for delivery through a carrier chosen by ChemDAQ, the costs and terms of which shall be F.O.B. ChemDAQ Inc..
6. Risk of Loss: The risk of loss from any casualty to the system during shipment to the Customer, regardless of the cause, will be the responsibility of Customer except for the period when ChemDAQ has actual physical control of the system during the installation process.

7. Installation of the System: Customer and ChemDAQ will agree on an installation plan for the system comprising location of system components, electrical connections between system components at Customer's facilities and location of power outlets. Customer agrees to install the wall mount box, run wiring, and provide power outlets and other components as agreed in the installation plan. Except as otherwise agreed, ChemDAQ will perform final installation and verification of the hardware and software at the Customer's site at a mutually agreed time to be arranged.

8. Limitation of Liability: CHEMDAQ MAKES NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL CHEMDAQ ITS REPRESENTATIVES, DISTRIBUTORS, SUBCONTRACTORS OR ITS VENDORS BE LIABLE TO THE CUSTOMER OR CUSTOMER'S STAFF OR EMPLOYEES FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT OR LOSS OF USE, ARISING OUT OF THE SALE, MANUFACTURE OR USE OF ANY PRODUCTS SOLD OR SERVICES RENDERED HEREUNDER WHETHER SUCH CLAIM IS PLEADED IN CONTRACT OR IN TORT, INCLUDING STRICT LIABILITY IN TORT.

ChemDAQ will be responsible for the repair, re-calibration or replacement (at ChemDAQ's option) of any equipment rendered unserviceable to the Customer solely as the result of negligent acts or misjudgment of ChemDAQ's personnel while servicing equipment. Correction of non-conformities, whether patent or latent, in the manner and within the time provided above shall constitute the entire liability of ChemDAQ with respect to such equipment whether in contract, warranty, tort, strict liability, or otherwise. In no event will ChemDAQ be responsible for, or liable to, the Customer or Customer's staff or employees in excess of its obligation to repair, recalibrate or replace the equipment covered under this contract.

No one is authorized to make any warranty or representation other than as set forth in the standard product warranty, and that the customer may not rely on any other warranty or representation of any other person or legal entity other than ChemDAQ.

9. Intended Purpose: Customer acknowledges that it alone has determined the intended purpose and suitability of the goods purchased. It is expressly agreed by the parties that any technical or other advice given by ChemDAQ with respect to the use of the goods or services is given without charge and at Customer's risk; therefore, ChemDAQ assumes no obligations or liability for the advice given or results obtained.



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10. Exclusive Remedies: SHOULD THE PRODUCT FAIL TO CONFORM TO THE WARRANTY DESCRIBED BELOW, CUSTOMER'S ONLY REMEDY AND CHEMDAQ'S ONLY OBLIGATION SHALL BE, AT CHEMDAQ'S SOLE OPTION, REPLACEMENT OR REPAIR OF SUCH NON-CONFORMING GOODS OR REFUND OF THE PURCHASE PRICE PAID ON THE CONTRACT.

 11. Pricing Information and Availability Disclaimer: ChemDAQ reserves the right to make adjustments to pricing, Products and Service offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, ChemDAQ cannot guarantee that it will be able to fulfill Customer's orders. If Services are being performed on a time and materials basis, any estimates provided by ChemDAQ are for planning purposes only.

 12. Technical Support: ChemDAQ will provide technical assistance when necessary via ChemDAQ's toll free (US only) Customer Care Line (1-800-245-3310 Extn. 310, 412-787-0202, Extn. 310) Monday through Friday between the hours of 8:30am-5:00pm (EST). Technical support for emergencies situations is available 24 hours a day.

Warranty

13. Limited Warranty: ChemDAQ products are warranted to be free from defects in material and workmanship for a period of one year from the earlier of the date of installation, or 120 days after the date of shipment, except where otherwise stated in writing by ChemDAQ. The limited warranty corresponds to the Basic Service Plan described below.

14. Warranty Terms: The following terms will apply to the ChemDAQ warranty:
 - a. The standard product warranty will cover all repairs of equipment supplied by ChemDAQ. This agreement includes all parts and labor from the date of installation of the equipment by a ChemDAQ authorized technician if installed within 120 days of shipment; or from the date of acceptance and issuance of a purchase order by the Customer for equipment that is not installed by a ChemDAQ authorized technician within 120 days of shipment. The warranty does not cover customer site repairs or in-service training.

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- b. All repair work must be performed by authorized ChemDAQ service technicians. The warranty does not apply to service made necessary by accident, fire, theft, neglect abuse, misuse, deterioration caused by chemicals that are not in normal operations or repairs made necessary by personnel other than those authorized by ChemDAQ.
 - c. The Customer must receive authorization from ChemDAQ prior to returning any malfunctioning equipment for repair. The Customer will be responsible for requesting the required shipping documents from a carrier that ChemDAQ specifies. Should the Customer fail to fulfill the return ship requirements, the Customer will be responsible for any damage that occurs to the equipment during shipping.
 - d. Loaner equipment may be provided when necessary to minimize down time due to repairs. Following the Customer's receipt of the repaired equipment, the loaner equipment must be returned to ChemDAQ within five business days if the Customer is located within the US and ten business days if the customer is located outside the US. If some or all of the equipment is not returned to ChemDAQ within this period, the Customer agrees to pay the current list price for any equipment not returned.
 - e. Accessories and expendables such as printer paper, ink cartridges, computer disks are not covered under the warranty.
15. Extended Warranty: The warranty period may be extended through the purchase of an Extended Warranty Service plan. The conditions of the Product Warranty described in sections 8, 10 and 12 also apply to the Extended Warranty Service Plans.
16. There are two levels of Extended Warranty Service plan, the Basic and Premium Service plans.
- a. The Basic Service includes telephone support, loaner replacement in the event that ChemDAQ equipment malfunctions and cost of parts and labor for factory repair of equipment. On-site support is available for an additional fee.
 - b. The Premium Service includes all the features of the Basic Service plan, plus one on-site corrective maintenance visit. If a customer does not require a visit during the contract year, this visit may be carried over to the next contract year if the Extended Warranty Service plan is renewed at the Premium Plan level. Customers can have no more than two corrective action visits within a contract year under the plan without incurring an addition charge.

- c. All Customers receive the Basic Service Plan for their first year after purchasing ChemDAQ equipment. The cost of the Basic Service Plan after the first year is calculated as a percentage of the then current list price of the equipment owned by the Customer. In both the first year and subsequent years, the Customer may upgrade to the Premium Service plan for an additional fee.
- d. The Extended Warranty Agreement term is for one, three or five years and the Customer agrees to pay the scheduled fee; payment to be made in advance of the start of the term of the agreement.

Sensor Usage Agreement

17. Sensor Usage: In order for the Customer's gas monitors to function correctly, the monitors must have sensors installed, and the sensors must be within their calibration period. ChemDAQ will provide sensors for the term of the Sensor Usage Agreement for use with Customer's monitors. In order to ensure that calibrated sensors are installed, ChemDAQ will:
 - a. track when factory calibrated sensors are required,
 - b. contact the Customer to let them know when factory calibrated sensors will be sent, and
 - c. deliver factory calibrated sensors to the Customer at an interval determined by ChemDAQ.
 - d. provide telephone support for Sensor usage

The Customer will install these factory calibrated sensors in the gas monitors and promptly return the expired sensors back to ChemDAQ. ChemDAQ reserves the right to change the interval between shipment of sensors and the number of sensors shipped per monitor over the duration of the Sensor Usage Agreement.

18. Sensor Exchange: **It is the Customer's responsibility to exchange the old sensor(s) for the new pre-calibrated sensor(s) and return the old sensor(s) to ChemDAQ within 5 business days for customers within the United States and 15 business days for customers located outside the United States.** ChemDAQ will provide Customers within the United States a pre-paid return shipping label. Unless agreed to otherwise, shipping charges; customs fees and import duties (where applicable), are the responsibility of the customer and will be billed separately.
19. Lost Sensors and Bias Boxes: If the sensors and/or bias boxes (PointGard sensors only) are not returned to ChemDAQ **within 5 business days of the Sensor Exchange for Customers within the United States and 15 business days for Customers located outside the United States**, the Customer agrees to pay a 'lost sensor' fee of \$1,500 per sensor and a 'lost bias box' fee of \$1,000 per bias box.

20. Ownership of Sensors: Sensors will remain the property of ChemDAQ, and must be returned to ChemDAQ at the termination of the Sensor Usage Agreement, if the Agreement is not renewed. NOTE: THE GAS MONITOR(S) WILL NOT DETECT GAS WITHOUT A SENSOR.
21. Sensor Usage Agreement Term: Customers may have either Fixed Term sensor usage agreements or Continuous Term sensor agreements. For customers with Fixed Term sensor usage agreements, the Sensor Usage Agreement term is as stated on the Sensor Usage and Extended Warranty Form. In addition, the following conditions apply to the Fixed Term sensor usage agreements.
- a. In order to ensure uninterrupted gas monitoring at Customer's site, upon reaching the end of the term of the sensor usage agreement, THIS AGREEMENT WILL AUTOMATICALLY RENEW ON A MONTH TO MONTH BASIS, at a price of \$150 per sensor module per month, unless the Customer either renews the Sensor Usage Agreement for a longer term, or the Customer notifies ChemDAQ in writing prior to the termination date that the Customer does not want to renew the Sensor Usage Agreement.
 - b. Sensor Usage Payment: Customer agrees to pay the Sensor Usage Agreement fee for the entire term of the Sensor Usage Agreement, payment to be made within 30 days of the start of the agreement or within 30 days of the renewal of the agreement.
 - c. Non-Renewal of the Sensor Usage Agreement: If the Customer notifies ChemDAQ of the Customer's intent not to renew the Sensor Usage Agreement, the Customer shall return the sensors and/or bias boxes (PointGard sensors only) to ChemDAQ within 5 business days of the termination of the Sensor Usage Agreement if Customer site is located within the United States and 15 business days if the Customer site is located outside the United States, otherwise the Customer agrees to pay the 'lost sensor' fee and or the 'lost bias box' fee.

For customers with 'Continuous Term' sensor usage agreements, the customer will be billed every four months for sensor usage. ChemDAQ will periodically supply factory calibrated sensors to the customer at a frequency determined by ChemDAQ based on the types of sensor employed and information about the Customer's location. The customer may terminate the sensor usage agreement upon 90 days notice, and the termination becomes effective upon the return of the sensors (and bias boxes if appropriate) to ChemDAQ, or notification to ChemDAQ that the sensors and bias boxes have been lost, and the appropriate lost sensor and lost bias box fees have been paid.

22. Sensor Condition: The sensors are designed to be operational almost immediately upon installation in the gas monitor; however there is a small risk that sensors may be damaged during shipment. **It is the Customer's responsibility to determine the condition of the sensor(s) upon receipt of any sensors and report any deficiencies to ChemDAQ immediately.**

Sensor Shipment: Scheduled shipments of sensor(s) will be made only when contact has been made with a responsible person at the Customer's facility. The responsible person is designated by the Customer and is usually the person who will be performing the sensor exchange and returning the old sensor(s).

23. Sensor Warranty: Sensors are subject to the following limited warranty for the term of the Sensor Usage Program. If ChemDAQ is notified that a sensor failure has occurred, a pre-calibrated replacement sensor will be provided. CHEMDAQ MAKES NO OTHER WARRANTIES FOR THE SENSOR, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL CHEMDAQ, ITS REPRESENTATIVES, DISTRIBUTORS, SUBCONTRACTORS OR ITS VENDORS BE LIABLE FOR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT OR LOSS OF USE, ARISING OUT OF THE USE OF THE SENSORS WHETHER SUCH CLAIM IS PLEADED IN CONTRACT OR IN TORT, INCLUDING STRICT LIABILITY IN TORT.

Software License Agreement

24. Software Use License: For the purposes of this agreement, the term "Software" includes both the software running on a computer and embedded code within other devices (also called firmware). The term "DAQ Software" refers to the software designed to run on the ChemDAQ DAQ® computer. Purchase of a ChemDAQ DAQ computer with DAQ Software installed, or the purchase of gas monitoring equipment with embedded code, does not constitute purchase of the Software, but only provides a limited license to use the Software as is disclosed herein.
- a. Single-User Product: By using a ChemDAQ supplied computer with the DAQ Software pre-installed, customer agrees to be bound by the terms of this license agreement. If customer does not agree to all of the terms, the DAQ computer must be returned promptly; together with any accompanying printed materials in an unopened condition to ChemDAQ, for a full refund.

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- b. Grant of Single License: By this License Agreement the Customer is permitted to use one or more copies of DAQ Software, which may include electronic documentation, each copy to be run only on a single ChemDAQ supplied DAQ computer for use with the number of gas monitors stated in the purchase agreement. The Customer agrees not to copy or use the DAQ Software on any other computer or over a network or any other transfer device or system unless agreed to in writing by ChemDAQ.
- c. Intellectual Property: All intellectual property rights in the Software (including any and all graphics, algorithms, audio, images, video, applets and text incorporated in the Software) are owned by ChemDAQ, its suppliers and licensors, and are protected by United States and international law, including applicable intellectual property law such as copyright law. ChemDAQ, its suppliers and licensors retain all rights not expressly granted in this License Agreement.

Customer agrees not to reverse engineer, decompile or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding such restrictions.

ChemDAQ Software is copyrighted and the Customer agrees not to share, lend, rent or lease the Software, and further agrees not to deface, modify or alter the Software or create works derived from it. Customer agrees not to distribute printed copies of any documentation provided in electronic format outside of Customer's organization without the express written permission of ChemDAQ.

- d. Transfer of Software License: The Customer agrees not to sublicense, assign, or otherwise transfer a license in any portion of the DAQ Software, but the Customer may transfer his/her/its rights under this License Agreement on a permanent basis, provided the license granted by this Agreement is also transferred, the DAQ computer with the DAQ Software installed and all associated printed materials, and no copies are retained, and the recipient agrees to the terms of this License Agreement and informs ChemDAQ of the transfer.

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- e. Limited Software Warranties: ChemDAQ provides only a limited warranty for this ChemDAQ software. ChemDAQ warrants that the software will perform substantially in accordance with the accompanying materials for a period of one year from the date of receipt. THE CUSTOMER EXPLICITLY DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CHEMDAQ CANNOT AND DOES NOT WARRANT THAT THE PERFORMANCE OR RESULTS THE CUSTOMER MAY OBTAIN BY USING THE SOFTWARE WILL MEET THE CUSTOMER'S NEEDS OR THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR FREE OF ERROR. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use or a virus or other intentionally harmful software.
- f. Limitation on Remedies: Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund elected by ChemDAQ, THE CUSTOMER IS NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO INCIDENTAL, CONSEQUENTIAL AND ANY SPECIAL, INCIDENTAL DAMAGES, (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss), if the Software does not meet ChemDAQ's Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose.
- g. Exclusive Remedy: ChemDAQ's entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach of this agreement shall be, at ChemDAQ's option to,
- (a) return of the amount paid for the Software in accordance with ChemDAQ's return policies, or
 - (b) repair or replacement of the Software that does not meet this Limited Warranty. Any replacement Software will be warranted for the remainder of the original warranty period.

General Terms

25. Force Majeure: ChemDAQ shall not be liable for any loss or damage resulting from delay in prosecution or completion of the work caused by labor disputes, floods, fires, riots, thefts, accidents, inability to obtain necessary labor, materials, components, or fuel, acts of Government, or any other cause which is beyond the reasonable control of ChemDAQ. ChemDAQ shall have the right in the event of the happening of any of the above contingencies, to cancel this agreement or any part thereof without any resulting liability.
26. Statute of Limitations: No action arising out of any claimed breach of this agreement or transactions under this agreement may be brought by the Customer more than one year after the cause or action has accrued, without regard to the date the breach is discovered.
27. Assignments: Customer may not delegate any duties, nor assign any rights or claims hereunder, without prior written consent of ChemDAQ.
28. Waiver: Waiver by ChemDAQ of any of these Terms and Conditions shall not constitute a waiver of any other of these Terms and Conditions.
29. Ineffective Provisions: The provisions of this Agreement shall be severable, and if any one of them is held to be invalid or unenforceable for any reason, such provision shall be modified to the extent necessary to cure such invalidity. The invalidity or unenforceability of one provision shall not affect any other provision of this Agreement.
30. Different Terms: Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order or other document will be null and void and this agreement is expressly conditioned on Customer's assent to any different or additional terms contained herein. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions or any purchase order or invoice.
31. Clause headings: Headings within this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.
32. Language: In case of disagreement between the translations of this contract into other languages, this English language version shall control.



33. Controlling Law: This contract, sale of the equipment, provision of services, software license and any other matter arising out of the transaction contemplated hereunder shall be governed by the substantive law of the Commonwealth of Pennsylvania, excluding the Commonwealth's choice of law provisions. Both parties agree to submit to the personal jurisdiction of the state and federal courts in Allegheny County, Pennsylvania.