

LORD MicroStrain[®]

Terms and Conditions of Service



©2013 LORD Corporation
MicroStrain® Sensing Systems
459 Hurricane Lane
Suite 102
Williston, VT 05495
United States of America
Phone: 802-862-6629
Fax: 802-863-4093

www.microstrain.com
support@microstrain.com

REVISED: January 31, 2013

1. **Acceptance of Terms and Conditions of Service.** By ordering a Product (as hereinafter defined) from LORD Corporation, dba MicroStrain (“LORD”) which requires or may require the performance by LORD of any calibration, re-calibration, customization, out-of-warranty repair or other service (hereinafter individually and collectively, “Services”), or by requesting that LORD perform Services on any Product, Buyer agrees to be bound by this Terms and Conditions of Service (“TOS”). LORD shall not be bound by any other terms of service, regardless of whether Buyer tenders terms of service with a request for service or otherwise. This TOS supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter and shall prevail over any conflicting or additional terms of any quote, request, previous agreement, acknowledgment or similar communications between LORD and Buyer. As used in this TOS, (a) “Product” or “Products” includes all LORD products, individually and collectively; and (b) “Software” means the software portion of any Product and/or any software embedded in any Product, and shall include any software or firmware update which is provided or made available by LORD. **Notwithstanding anything contained in this TOS, LORD’s Terms and Conditions of Sale shall remain in full force and effect with respect to all Products and Software.**
2. **Pricing.** All prices for Services are quoted in US dollars unless otherwise expressly stated and are valid for thirty (30) days. Buyer is solely responsible for payment of all shipping charges, freight costs, taxes, import fees and duties, insurance, value added taxes, and any other charge incident to Services (“Additional Charges”).
3. **Payment:** Payment for Services shall be made in advance to LORD in U.S. dollars by credit card, bank draft or letter of credit, unless otherwise agreed in writing by LORD. At the sole discretion of LORD, credit terms of net 30 days up to a pre-approved limit may be offered to Buyer. A late payment charge of one and a half (1.5%) percent per month, or the maximum percentage rate permitted by law, if lower, shall be charged on all past due balances. Buyer agrees to pay all costs and expenses incurred by LORD in collecting or attempting to collect past-due balances, including, but not limited to, third party collection fees, reasonable attorneys’ fees, legal expenses and court costs.
4. **Shipping Terms.** With respect to any Product for which Services are performed by LORD, risk of loss shall remain with Buyer at all times save while such Product is in LORD’s physical possession. Following the Services, LORD will arrange for return shipping of such Product to the Buyer, but the costs thereof, including without limitation any insurance, are the sole responsibility of Buyer. Delivery times quoted are estimates only and LORD shall not be liable for delays in delivery.
5. **Acceptance.** Products returned to Buyer following any Services shall be deemed to be accepted by Buyer upon receipt of shipment. Any discrepancy must be reported to LORD within five (5) days of Buyer’s receipt of shipment.
6. **LIMITED WARRANTY ON SERVICES.** LORD WARRANTS AND REPRESENTS THAT ANY PRODUCT RETURNED TO BUYER AFTER THE SERVICES WILL, AT THE TIME SUCH PRODUCT LEAVES LORD’S PREMISES, SUBSTANTIALLY CONFORM TO LORD’S THEN-CURRENT FUNCTIONAL STANDARDS FOR SUCH PRODUCT; THAT ANY SOFTWARE IN SUCH PRODUCT WILL SUBSTANTIALLY CONFORM TO LORD’S THEN-CURRENT FUNCTIONAL SPECIFICATIONS FOR SUCH SOFTWARE; AND THAT ANY CALIBRATION OF SUCH PRODUCT SHALL SUBSTANTIALLY CONFORM TO THE WRITTEN SPECIFICATIONS AGREED UPON BY LORD. THE FOREGOING SHALL NOT IN ANY WAY MODIFY THE LIMITED WARRANTIES CONTAINED IN PARAGRAPH 8 OF LORD’S TERMS AND CONDITIONS OF SALE, WHICH LIMITED WARRANTIES SHALL REMAIN IN FULL FORCE AND EFFECT.
7. **WHAT IS NOT COVERED BY THE LIMITED WARRANTY ON SERVICES.** The Limited Warranty on Services contained in paragraph 6 above is void with respect to: i) any Product which, in LORD’s sole judgment, has been subjected to abuse, accident, alteration, modification, tampering, negligence, misuse, faulty installation, lack of reasonable care, repair or service by anyone other than LORD that is in any way not contemplated in the documentation for such Product and its Software; ii) any Product, the model or serial number of which has been altered, tampered with, defaced or removed; iii) the installation, uninstallation or reinstallation of any Product; iv) shipping costs; v) operational adjustments covered in the operating manual for any Product or its Software; vi) maintenance, calibration or re-calibration of any Product; vii) damage occurring in shipment or due to acts of nature, failures due to power surges or other Force Majeure causes beyond LORD’s control; viii) cosmetic damage; ix) any hardware, software, firmware or other product or service provided or furnished by anyone other than LORD; x) any Product or Software that has been installed or used outside

LORD's technical specifications; and xi) the failure to install any required Firmware or Software Update. Repair, calibration or re-calibration by anyone other than LORD will also void the Limited Warranty on Services.

8. **EXCLUSION OF ALL OTHER WARRANTIES ON SERVICES.** EXCEPT FOR THE LIMITED WARRANTY ON SERVICES CONTAINED IN PARAGRAPH 6 ABOVE, LORD EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OF GOODS OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY PURPOSE. BY ACCEPTING DELIVERY OF ANY PRODUCT WITH RESPECT TO WHICH SERVICES HAVE BEEN RENDERED, BUYER ACKNOWLEDGES AND AGREES THAT: i) THE VALUE AND USE OF SUCH PRODUCT AND ITS SOFTWARE IS UNRELATED TO THE VALUE OR COST OF ANY REAL OR PERSONAL PROPERTY IN CONNECTION WITH WHICH SUCH PRODUCT MAY BE USED OR ANY SERVICES RELATED TO SUCH PRODUCT WHICH ARE FURNISHED BY ANY PERSON; ii) LORD MAKES NO WARRANTY THAT SUCH PRODUCT OR ITS SOFTWARE WILL AVERT, DETECT OR PREVENT OCCURRENCES OR THE CONSEQUENCES THEREOF WHICH SUCH PRODUCTS AND SOFTWARE MAY HAVE BEEN DESIGNED TO DETECT, AVERT OR PREVENT, OR THAT SUCH PRODUCT OR ITS SOFTWARE MAY NOT BE COMPROMISED, DISABLED OR CIRCUMVENTED; iii) LORD HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO OR FOR THE BENEFIT OF BUYER, WHICH CONTRADICT ANY OF THE FOREGOING; AND iv) "FALSE ALARMS" AND "FALSE READINGS" FROM LORD'S PRODUCTS AND SOFTWARE MAY OCCUR FOR ANY NUMBER OF REASONS AND LORD DOES NOT WARRANT AGAINST SUCH FALSE RESULTS.

9. **Limitations on Liability.**

- a. IN NO EVENT SHALL LORD OR ITS PRINCIPALS, DIRECTORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, DISTRIBUTORS OR PARENT, SUBSIDIARY OR AFFILIATED ENTITIES ("RELATED PERSONS") BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND OR NATURE ARISING OUT OF OR RELATED TO, IN WHOLE OR IN PART, THE USE, MISUSE OR NONUSE OF A PRODUCT, INCLUDING WITHOUT LIMITATION INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS AND OTHER ECONOMIC LOSSES, DAMAGES ARISING OUT OF OR RELATED TO PERSONAL INJURY OR DEATH, OR SPECIAL, PUNITIVE, INCIDENTAL, REMOTE OR SPECULATIVE DAMAGES SUFFERED BY BUYER OR ANY THIRD PARTY, EVEN IF LORD WAS ADVISED OR AWARE OF THE POSSIBILITY THAT ANY SUCH DAMAGES MIGHT OCCUR.
- b. IN THE EVENT BUYER SUFFERS ANY DIRECT DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO SERVICES, BUYER'S REMEDY SHALL IN NO EVENT EXCEED EITHER THE COST OF SERVICES PAID BY BUYER OR THE RE-PERFORMANCE OF SUCH SERVICES BY LORD AT NO COST TO BUYER, AS DETERMINED BY LORD IN ITS SOLE DISCRETION; AND THERE SHALL BE NO OTHER REMEDY AVAILABLE TO BUYER FOR ANY DAMAGES.
- c. THE LIMITATIONS CONTAINED IN THIS PARAGRAPH 9 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW REGARDLESS OF THE THEORY UPON WHICH LIABILITY OF LORD IS BASED AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **INDEMNIFICATION.** BUYER HEREBY INDEMNIFIES AND HOLDS HARMLESS LORD AND ITS RELATED PERSONS FROM AND AGAINST ANY AND ALL LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, COURT COSTS AND LEGAL EXPENSES) ARISING OUT OF OR RELATED TO: (1) ANY USE, MISUSE OR NONUSE OF A PRODUCT BY BUYER, ANY PERSON ACTING UNDER BUYER'S DIRECTION, CONTROL OR AUTHORIZATION, OR ANY THIRD PARTY, WHETHER SUCH PRODUCT IS USED ALONE OR IN CONJUNCTION WITH THE OPERATION, USE, MAINTENANCE OR SERVICE OF ANY OTHER PRODUCT OR GOOD, TANGIBLE OR INTANGIBLE, AND REGARDLESS OF THE PURPOSE OF SUCH USE, MISUSE OR NONUSE, INCLUDING WITHOUT LIMITATION THE COMPLIANCE OF ANY OTHER PRODUCT OR GOOD WITH ANY SAFETY OR TECHNICAL STANDARD OR SPECIFICATION FOR OPERATION, USE OR MAINTENANCE; AND (2) ANY THIRD PARTY CLAIM ARISING OUT OF OR RELATED IN ANY WAY TO THE SERVICES.

11. **RMA.** Prior to sending any Product to LORD for Services, Buyer shall (unless otherwise instructed in writing by LORD): i) advise LORD in writing as to what Services are required; ii) obtain a Return Merchandise Authorization (RMA) number from LORD; iii) if requested by LORD, provide written proof of purchase of the Product (such as a copy of the dated purchase invoice for the Product); iv) after an RMA number is issued, package the Product securely in the original or other suitable shipping package to ensure that it will not be damaged in transit, with the RMA number prominently marked on the outside of the package; and v) within fifteen (15) days of issuance of the RMA, ship the Product at Buyer's sole expense to LORD. In addition, Buyer shall adhere to the requirements contained in paragraph 14a. through 14d. of LORD's Standard Terms and Conditions of Sale.

12. **Force Majeure.** Except for the obligations to make payments, neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure.

13. **Notice.** All notifications and communications between the parties relating to this Agreement or the subject matter hereof shall be made in writing and signed by a person duly authorized to provide such notice.

14. **Entire Agreement.** This TOS shall constitute the entire agreement between Buyer and LORD with respect to the Services and shall not be modified or amended, except in writing, signed by Buyer and LORD.

15. **No Assignment by Buyer.** This TOS may not be assigned, sublicensed, leased, sold or otherwise transferred by Buyer without prior written consent from LORD, and any transfer made without such prior written consent shall be null and void. This TOS and any rights granted herein by LORD are personal to Buyer and may be used for personal or internal business use only and may not be used on behalf of a client or customer of Buyer except as authorized in writing by LORD.

16. **Enforceability/Severability.** If any provision of this TOS shall be held void, voidable, invalid or inoperative, no other provision hereof shall be affected as a result, and accordingly, the remaining provisions shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein, provided, however, that if such void, voidable, invalid or inoperative provision is a material term or condition, the parties shall be compelled to supply a substitute provision, negotiated in good faith, which comes closest to their original intention.

17. **Waiver.** No provision of this TOS shall be deemed to have been waived by any act or acquiescence on the part of either party, it being understood that waiver may only occur by an instrument in writing signed by an authorized officer of the party against whom such waiver is sought to be enforced. In the event of a waiver, whether in writing or by operation of law, such waiver shall not constitute a waiver of any other provision or of the same provision on another occasion.

18. **Cumulative Remedies.** All rights and remedies of the parties, whether at law or in equity, shall be cumulative and none of them shall be in limitation of any other right or remedy.

19. **Rights of Third Parties.** Nothing in this TOS shall be construed so as to give any right or remedy to any third party whatsoever.

20. **Governing Law.** THIS TOS, TOGETHER WITH ALL RELATED INVOICES, CORRESPONDENCE AND OTHER DOCUMENTS EXCHANGED BETWEEN LORD AND BUYER, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF VERMONT, USA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW OR TO THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG), WHICH IS HEREBY SPECIFICALLY DISCLAIMED BY THE PARTIES WITH RESPECT TO ALL OF THE FOREGOING. Any action, suit or proceeding arising out of or related to this TOS, the documents heretofore described and the related subject matter of the foregoing shall be brought only in a federal or state court of competent jurisdiction located in the county in which LORD has its principal place of business at the time of filing of such action, suit or proceeding, and the Parties hereby unconditionally and irrevocably consent and submit to such exclusive jurisdiction and waive any objection that either of them may now or hereafter have with respect thereto.

21. **Headings.** The paragraph headings in this TOS are solely for the convenience of the parties and have no legal or contractual significance.

© 2013 LORD Corporation. All rights reserved. The Products and Software may be protected by U.S. patents and/or may have patents pending in the USA and elsewhere. LORD and the product and service marks used by LORD in its business, website and marketing materials, together with the logo forms thereof, are trademarks and/or service marks of LORD which may be registered in the United States or in other jurisdictions including internationally. LORD's trademarks, service marks and trade dress may not be used in connection with any product or service that is not affiliated with LORD or in any manner that is likely to cause confusion among customers or disparages or discredits LORD. All trademarks not owned by LORD that appear on LORD's website or in product literature are the property of their respective owners, who may or may not be affiliated with, connected to or sponsored by LORD.

Copyright © 2013 LORD Corporation
Strain Wizard®, DEMOD-DC®, DVRT®, DVRT-Link™, WSDA®, HS-Link®, TC-Link®, G-Link®,
V-Link®, SG-Link®, ENV-Link™, Watt-Link™, Shock-Link™, LXRS®, Node Commander®,
SensorCloud™, Live Connect™, MathEngine®, EH-Link®, 3DM®, FAS-A®,
3DM-GX3®, 3DM-DH®, 3DM-DH3™, MicroStrain®, and Little Sensors, Big Ideas.®
are trademarks of LORD Corporation.
(version 13.01)

LORD Corporation
MicroStrain® Sensing Systems
459 Hurricane Lane,
Unit 102
Williston, VT 05495 USA
www.microstrain.com

ph: 800-449-3878
fax: 802-863-4093
support@microstrain.com
sales@microstrain.com