TERMS OF USE

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Your Consent and Use of the Website

Your use of the Website constitutes your acceptance of and agreement to follow and be bound by the Terms of Use, Privacy Policy, and any further policies or terms that govern your use of the Website and/or Services, which are all incorporated herein by reference (collectively, this “Agreement”). Use of the Website and Services are further subject to the additional terms, disclaimers, caveats, and notices that may appear elsewhere on the Website. By accessing and using the Website and Services, you acknowledge that you have read, understood and agree to be bound by this Agreement as if you had signed it. Use of the Website is voluntary. IF AT ANY TIME YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, THEN YOU ARE NOT AUTHORIZED TO ACCESS, BROWSE OR USE THE WEBSITE OR SERVICES, AND YOU MUST DISCONTINUE USE OF THE WEBSITE AND SERVICES IMMEDIATELY.

As our business changes from time to time, this Agreement may likewise change. We reserve the right to change or modify the terms and conditions that govern your use of the Website, Services and this Agreement at any time as provided herein without notice to you. You should check the Website frequently to see the current Agreement in effect and any changes that may have been made to it. Your use of the Website and Services following any such change constitutes your agreement to follow and be bound by the terms and conditions as changed. We may terminate your right to and deny you access to the Website if, in our sole discretion, you fail to comply with any term or provision of this Agreement, or for any other reason whatsoever.

Use of the Website is limited to persons over the age of thirteen (13) who are residents of the United States. Those who choose to access the Website from locations outside of the United States do so on their own initiative, and are responsible for compliance with local laws if and to the extent local laws are applicable including, without limitation, all applicable laws, rules and regulations regarding the transmission of data exported from the United States or the country in which you reside. The Website is not directed to persons under 13 years old. The policy of Power Probe TEK, as the operator of the Website, is NOT to knowingly collect any personal information from persons under 13, including “individually identifiable information,” as defined by the Children’s Online Privacy Protection Act (COPPA). If you are under 13, you should leave the Website without providing any information about yourself. Any access to or use of the Website or Services by anyone under the age of majority requires consent to this Agreement by a parent or legal guardian. By accessing or using the Website and/or Services, you represent and warrant to us that you are either a legal adult or, if under the age of majority, have obtained proper consent from a
parent or legal guardian to your use of the Website, Services and this Agreement. By using the Website and Services, you represent and warrant that you have the right, authority and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement.

**PROHIBITED USES.** Power Probe TEK imposes certain restrictions on your permissible use of the Website. You are prohibited from violating or attempting to violate any security features of the Website including, without limitation, (a) accessing content or data not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the Website, or any associated system, service or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Website, overloading, “flooding,” “spamming,” “mail bombing” or “crashing”; (d) using the Website to send unsolicited email including, without limitation, promotions or advertisements for products or services; (e) forging any TCP/IP packet header or any part of the header information in any email or post using the Website; or (f) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by Power Probe TEK in providing the Website. Any violation of system or network security may subject you to civil and/or criminal liability. Without limiting the foregoing, you may not use “bots,” spiders or intelligent agent software (or similar technologies) for any purposes other than accessing publicly posted portions of the Website and only for purposes consistent with this Agreement. You may not circumvent any access or use restrictions, data encryption or content protection related to the Website. You may not data mine the Website or in any way cause harm to the Website.

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FURTHER, WITHOUT LIMITING THE FOREGOING, ALL INFORMATION PROVIDED ON THE WEBSITE IS WITHOUT WARRANTY AS TO ITS COMPLETENESS, TIMELINESS, ACCURACY, SUITABILITY OR AUTHENTICITY. YOU SHOULD CONDUCT YOUR OWN DUE DILIGENCE AS TO THE TRUTH, ACCURACY, COMPLETENESS, AND CONTINUING VALIDITY OF ANY INFORMATION SET FORTH IN OR REFERENCED AT THE WEBSITE. LIKewise, POWER PROBE TEK DOES NOT WARRANT THE ACCURACY OF ANY THIRD PARTY CONTENT CONTAINED WITHIN OR REFERRED TO AT THE WEBSITE, INCLUDING ANY LINKS TO THIRD PARTY WEBSITES. POWER PROBE TEK IS NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER.

SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY IN WHOLE OR IN PART TO YOU.
UNDER NO CIRCUMSTANCES OR LEGAL THEORY SHALL POWER PROBE TEK OR ITS AGENTS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, MANAGERS, OFFICERS, EMPLOYEES, INFORMATION PROVIDERS, DISTRIBUTORS, VENDORS, ATTORNEYS OR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES (WHETHER DIRECT, INDIRECT, GENERAL, COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR OTHERWISE), INJURY, CLAIM OR LIABILITY OF ANY KIND OR CHARACTER BASED UPON OR ARISING FROM YOUR USE OF OR INABILITY TO USE THE WEBSITE OR SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IF YOU ARE DISSATISFIED WITH THE WEBSITE OR SERVICES, OR ANY CONTENT ON THE WEBSITE, OR WITH ANY OF THE TERMS OF THIS AGREEMENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE WEBSITE AND SERVICES.

WITHOUT LIMITING THE FOREGOING, THE LIABILITY OF POWER PROBE TEK FOR ANY DAMAGE OF ANY KIND, DIRECT OR INDIRECT, ARISING FROM YOUR USE OF THE WEBSITE OR SERVICES, ANY INFORMATION, CONTENT, PRODUCTS OR SERVICES OBTAINED AT OR FROM THE WEBSITE, OR OTHERWISE RELATING TO YOUR USE OF THE WEBSITE, PRODUCTS OR SERVICES, SHALL NOT EXCEED THE DOLLAR AMOUNT PAID BY YOU, IF ANY, TO POWER PROBE TEK FOR USE OF THE WEBSITE, PRODUCTS OR SERVICES.

THE LIMITATION OF LIABILITY SET FORTH ABOVE SHALL: (I) ONLY APPLY TO THE EXTENT PERMITTED BY LAW, AND (II) NOT APPLY TO (A) LIABILITY RESULTING FROM OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND (B) DEATH OR BODILY INJURY RESULTING FROM OUR ACTS OR OMISSIONS.

Release and Indemnification

IN THE EVENT YOU HAVE A DISPUTE WITH ONE OR MORE USERS OF THE WEBSITE OR SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE REGARDING ANY TRANSACTION OR USER GENERATED CONTENT) OR ANY THIRD PARTY WEBSITE THAT MAY BE LINKED TO OR OTHERWISE INTERACT WITH THE WEBSITE, INCLUDING, WITHOUT LIMITATION, ANY SOCIAL MEDIA SITE, YOU HEREBY AGREE TO RELEASE AND FOREVER DISCHARGE POWER PROBE TEK AND ITS AGENTS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, MANAGERS, OFFICERS, EMPLOYEES, INFORMATION PROVIDERS, SUPPLIERS, DISTRIBUTORS, VENDORS, ATTORNEYS AND AFFILIATES (COLLECTIVELY, THE “RELEASED PARTIES”) FROM ANY AND ALL RIGHTS, CLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE WEBSITE AND/OR SERVICES, TO THE FULLEST EXTENT PERMITTED BY LAW.
YOU FURTHER AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS, TO THE FULLEST EXTENT PERMITTED BY LAW, RELEASED PARTIES FROM AND AGAINST ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, EXPENSES, DAMAGES AND COSTS, INCLUDING REASONABLE ATTORNEYS’ FEES, RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, UNLAWFUL USE OR OTHER MISUSE, OR INABILITY TO USE THE WEBSITE OR SERVICES, YOUR BREACH OF THIS AGREEMENT, OR OTHERWISE RELATING TO THE BUSINESS WE CONDUCT ON THE WEBSITE (INCLUDING, WITHOUT LIMITATION, ANY POTENTIAL OR ACTUAL COMMUNICATION, TRANSACTION OR DISPUTE BETWEEN YOU AND ANY OTHER THIRD PARTY), ANY USE OF ANY SERVICE PROVIDED BY A THIRD PARTY PROVIDER, OR ANY USE OF A SERVICE OFFERED BY US THAT INTERACTS WITH A THIRD PARTY WEBSITE, INCLUDING ANY SOCIAL MEDIA SITE. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM. WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT SETTLE ANY MATTER WITHOUT OUR WRITTEN CONSENT. THIS SECTION SURVIVES TERMINATION OF THIS AGREEMENT.

Choice of Law, Arbitration, and Venue

This Agreement and any claim or controversy relating to or arising from the use of the Website or Services including, but not limited to, any transactions made or entered into at the Website, any information, content, products, services or promotions herein contained or provided from the Website, or any functionality, software or programming contained or provided at or from the Website (hereafter, “Claims”), shall be governed by the laws of the State of California without regard to principles of conflicts of law and, as applicable, the laws of the United States of America.

TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CAUSE OF ACTION OR CLAIM MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION OR CLAIM ARISES, OR THE CAUSE OF ACTION OR CLAIM SHALL BE FOREVER BARRED.

YOU AGREE TO ARBITRATE ANY AND ALL CLAIMS, INCLUDING ALL STATUTORY CLAIMS, AND ANY STATE OR FEDERAL CLAIMS. BY AGREEING TO ARBITRATION, YOU UNDERSTAND AND AGREE THAT YOU ARE GIVING UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO CLAIMS. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING TO YOUR USE OF THE WEBSITE OR SERVICES, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.
All Claims shall be decided by one arbitrator pursuant to this provision and the commercial arbitration rules and procedures of JAMS, Inc. at their offices located in Orange County, California. For more information on JAMS and/or the rules of JAMS, visit http://www.jamsadr.com. All Claims shall be brought solely in the parties’ individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person’s Claims, and may not otherwise preside over any form of a representative or class proceeding with respect to any such Claims. NEITHER PARTY SHALL BE PERMITTED TO OBTAIN AWARDS FOR AND, TO THE EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES (A) ALL RIGHTS TO CLAIM PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL, ENHANCED, INDIRECT OR CONSEQUENTIAL DAMAGES AND ANY OTHER DAMAGES, OTHER THAN FOR ACTUAL OUT-OF-POCKET EXPENSES, AND (B) ALL RIGHTS TO HAVE DAMAGES MULTIPLIED OR OTHERWISE INCREASED. The decision of the arbitrator shall be final and binding. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate an arbitration award, shall be conducted in the Superior Court of the State of California, in and for the County of Orange or, where applicable, the federal District Court sitting in the County of Orange, State of California. Likewise, in the event that this arbitration agreement is for any reason held to be unenforceable, any litigation shall be commenced only in the federal or state courts located in Orange County, California. You hereby irrevocably consent to the jurisdiction of those courts for such purposes.

BY USING THE WEBSITE AND/OR SERVICES IN ANY MANNER, YOU AGREE TO THE ABOVE ARBITRATION AGREEMENT. IN DOING SO, YOU GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND ANY CLAIMS BETWEEN YOU AND US. YOU ALSO GIVE UP YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION OR OTHER CLASS PROCEEDING.

Submission and Posting of Information, Comments, Writings and Other User-Generated Content and Materials

As a user of the Website or Services, you may be able to post content on the Website and/or Power Probe TEK’s social media pages or accounts including, without limitation, by providing testimonials or reviews, leaving comments, using the chat service, etc. You are solely responsible for the content you publish, display or post on the Website or Services, or transmit or display to other users. However, Power Probe TEK reserves the right to block or remove any communications or materials that it determines to be (a) abusive, defamatory, or obscene, (b) fraudulent, deceptive, or misleading, (c) in violation of copyright, trademark or other intellectual property rights, (d) in violation of any law, regulation or this Agreement, or (e) offensive or otherwise unacceptable to Power Probe TEK in its sole discretion. Power Probe TEK reserves the right, but undertakes no duty, to review, edit, move or delete any communication or material provided for display or placed on the Website or Services, in its sole discretion, without notice. If at any time Power Probe TEK chooses, in its sole discretion, to monitor the content, Power Probe TEK nonetheless assumes no responsibility for the content, no obligation to modify or remove any inappropriate content, and no responsibility for the conduct of the user submitting any such content. You agree that Power Probe TEK shall under no circumstances be held liable on account
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Your submission of such information and material shall further constitute an assignment to Power Probe TEK of all worldwide rights, titles and interests and goodwill in the information and materials without payment of any compensation. By posting content to any public area of the Website or Power Probe TEK’s social media pages or accounts, you automatically represent and warrant that you have the right to grant to us, our affiliates, licensees and successors, an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing.

If you provide or post any information, materials, text, images, music, video, or other content or works of any nature (collectively, “Posted Content”) at or through the Website, you represent, warrant, and agree that any such Posted Content:

(a) is not defamatory, obscene, pornographic, abusive, harassing, offensive, profane, or otherwise in violation of any law or right of any third party;

(b) is not false, inaccurate, misleading, or fraudulent;

(c) does not infringe any third party’s copyright, patent, trademark, trade secret or other proprietary or intellectual property rights or rights of publicity or privacy;

(d) does not violate any law, statute, ordinance or regulation (including, without limitation, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising);

(e) does not contain personal identifying information of any person other than you;

(f) does not contain any advertising of any nature whatsoever;

(g) does not contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal
information, or the operation of any computer or computer program, including, without limitation, any mechanism for overloading, “flooding,” “spamming,” “mail bombing” or “crashing” the Website or any system, or intended to send unsolicited e-mail including, without limitation, promotions, or advertisements for products or services; and

(h) shall become and be the property of Power Probe TEK with the full and unrestricted right of Power Probe TEK to distribute, copy, transfer, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, create derivative works from, or otherwise use such Posted Content without compensation to you.

Termination and Denial of Access

This Agreement is effective unless and until terminated by Power Probe TEK. If, in Power Probe TEK’s sole discretion, you fail to comply with any term or provision of this Agreement, Power Probe TEK may terminate your access to or use of the Website or Services. In the event of termination or denial of access by Power Probe TEK, you are no longer authorized to access the Website or Services, and the restrictions imposed upon you with respect to material copied or downloaded, and the disclaimers and limitations of liabilities set forth in this Agreement, shall continue in force.

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The Website may include links to other Internet sites maintained by third parties (“Linked Sites”). Power Probe TEK provides Linked Sites to you solely as a convenience, and the inclusion of Linked Sites does not imply endorsement by Power Probe TEK of the Linked Sites. You access Linked Sites at your own risk and by accessing them, you leave the Website. Linked Sites are not under the control of Power Probe TEK and Power Probe TEK is not responsible for any content of any Linked Sites.

 Modifications to the Website or Services

Power Probe TEK reserves the right at any time to modify or discontinue, temporarily or permanently, the Website and/or Services (or any part thereof) with or without notice in our sole discretion. You agree that Power Probe TEK shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Website and/or Services.

Product Images, Content and Specifications

All features, content, specifications, and prices of products and Services described or depicted on the Website are subject to change at any time without notice. All product descriptions are approximate and provided for convenience only. We make all reasonable efforts to accurately display the attributes of our products, including the applicable colors; however, the actual color you see will depend on your computer system and we cannot guarantee that your computer will accurately display such colors. Likewise, the product images on the Website may appear larger or smaller than their actual size. While Power Probe TEK attempts to be as accurate as possible in
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descriptions or other Content is accurate, complete, reliable, current or error-free.

Professional Advice Disclaimer

Any information we provide to you, including product descriptions and instructions, is for
informational purposes only. Use of the Website and Services is not meant to serve as a substitute
for professional advice. You should read and strictly follow all product labels, packaging inserts
and instructions, and manufacturer directions and warnings before using any product. When
appropriate, you should seek independent professional advice.

Miscellaneous

Headings in this Agreement are for reference purposes only and in no way define, limit, construe
or describe the scope or extent of such section. Nothing herein shall be deemed to create an agency,
partnership, joint venture, employee-employer or franchise-franchisee relationship of any kind
between Power Probe TEK and you or any other person or entity. Our failure to act with respect
to a breach of this Agreement by you or others does not waive our right to act with respect to other
or similar breaches. This Agreement, including the other policies referenced herein, shall
constitute the entire agreement and understanding between Power Probe TEK and you with respect
to use of the Website and/or Services and supersedes any and all prior agreements and
understandings of the parties with respect to the subject matter addressed herein. This Agreement
is binding on the parties hereto and their successors and assigns. If any provision in this Agreement
is deemed unlawful, void or unenforceable, then that provision will be deemed severed from the
Agreement and the remaining provisions shall remain in full force and effect as if no invalid or
unenforceable provision had been part of this Agreement.

Complaints or Concerns

If you have any complaints or concerns regarding the Website or Services, please contact us at [1-
(800) 655-3585] or [(714) 990-9443]. For California residents, the Complaint Assistance Unit of
the Division of Consumer Services of the Department of Consumer Affairs may be contacted by
telephone at (800) 952-5210 or (916) 445-1254 or by writing the California Department of
Consumer Affairs, Consumer Information Center at 1625 North Market Blvd., Suite N-112,
Sacramento, California 95834.