

Contract Terms and Conditions

Payment terms are net 30 days for customers with approved credit. This reseller arrangement will include no shipping charges; all products will be transferred to the End User electronically. Pricing is exclusive of sales taxes, use taxes, excise taxes, export taxes, or similar additional costs. Client is responsible to pay these costs or provide written evidence of exemption.

Mail or fax purchase orders to vibDaq at 3070 Kerner Blvd, Suite B, San Rafael, CA 94901, Fax: 415-258-9288 or email to vibDaq@calbay.com. This proposal is valid for 60 days. The contract may only be modified by written change order executed by client and vibDaq. To the extent these terms and conditions are inconsistent with Client's requirements or purchase orders, these terms and conditions shall take priority.

Client is purchasing vibDaq data engine licenses. Each data engine license will run on one computer and will require a software key provided by vibDaq.

vibDaq reserves the right to publish a generic profile of the application associated with this proposal for distribution in marketing literature, electronically or on the internet.

vibDaq warrants the hardware and software supplied for one year. Except as set forth in this proposal with regard to both hardware and software, vibDaq makes no representation or warranty of any kind whatsoever, including but not limited to, any warranty of freedom from patent infringement, of merchantability, of fitness for a particular purpose, or arising from a course of dealing or usage of trade or other express or implied warranties.

The total liability of vibDaq to Client for any loss, indemnity, damage or delay of any kind will not under any circumstances exceed twenty five percent (25%) of the Contract Sum. Under no circumstances will vibDaq be liable for any loss, indemnity, damage or delay arising out of its failure to perform due to causes beyond its reasonable control, including, without limitation, acts of God, interference by others, delays in receiving approvals or necessary information from Client or their representative, fires, strikes, floods, war, terrorism, riots, delays in transportation and adverse weather. Under no circumstances will vibDaq be liable for any special, incidental or consequential damages based on breach of warranty, breach of contract, negligence, gross negligence, strict liability, products liability or any other legal theory.

All claims arising out of this Contract shall be subject to arbitration before a single arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitrator shall be a person with experience in industrial instrumentation issues. The governing law and place of the arbitration will be the state of Texas.

This proposal is submitted in confidence for evaluation, and its contents are proprietary to vibDaq. The contents of this proposal shall not be revealed to any third party without the prior written consent of vibDaq.

The contract and entire agreement between the Client and vibDaq is defined by (a) these terms and conditions, (b) the proposal which is attached and, if applicable, or (c) purchase orders to the extent they do not contain any additional, inconsistent or contrary terms or conditions (all of which are expressly rejected).

