



TERMS AND CONDITIONS OF PURCHASE (T&C's)

1. Controlling Terms.

These terms and conditions shall govern all sales of goods and services by Technology Marketing Inc. ("Seller") to the buyer ("Buyer"), including, without limitation, the goods or services identified on the quotation, order acknowledgement, invoice or other document issued by Seller in connection with such sale (the "Sales Document") (these terms and conditions and the Sales Document shall collectively be referred to as the "Sales Agreement"). The Sales Agreement shall constitute the entire agreement between Seller and Buyer with respect to the sale of goods and services by Seller to Buyer, and shall supersede all prior agreements, understandings and communications, whether written or oral, between Seller and Buyer, and shall control irrespective of any inconsistent or additional terms and conditions, whether printed or otherwise, set forth in any communication from Buyer to Seller, or which otherwise would be deemed established by any course of dealing, course of performance or usage of trade, unless otherwise provided herein or specifically agreed to in writing by Seller. The acceptance by Seller of any order for any product is based upon the express condition that Buyer agrees to accept and be bound by all of the terms and conditions of the Sales Agreement. Buyer's acceptance of delivery or payment for any of Seller's products shall constitute Buyer's assent to such Sales Agreement.

2. Payment.

Unless otherwise stated in a Sales Document, all invoiced amounts shall be due and payable in full within thirty (30) days after the date of the shipment by or on behalf of Seller. Seller reserves the right to charge a late fee of one and one-half percent (1.5%) per month and shall be payable on all past due invoice amounts. All invoiced amounts and other amount owing to Seller are payable in United States Dollars. Buyer may not take any discount against amounts invoiced or otherwise due unless expressly set forth in the Sales Document or otherwise expressly authorized by Seller in writing. Buyer shall not set-off against or deduct from any amounts due to Seller hereunder all or any part of any amounts owed or alleged to be owed by Seller to Buyer or any damages or losses which Buyer may have sustained or allege to have sustained as a result of any breach or alleged breach by Seller of any obligation of any kind to Buyer (whether or not arising hereunder or in connection herewith).

3. Taxes.

Prices do not include any tax or other governmental charge or assessment upon the sale, shipment, production or use of products or services ordered or sold hereunder. Buyer shall be solely responsible for, and shall pay to Seller upon demand by Seller, any such tax, charge or assessment (other than any such tax on or measured by Seller's income).

4. Adjustment to Standard Cost.

The Buyer acknowledges that Seller has provided a price quote to Buyer pursuant to the applicable Sales Document based upon costs known by Seller as of the date and the time of the Sales Document delivered to Buyer (the "Standard Cost"). The Buyer acknowledges and agrees that such premise is an integral part of the benefit of the bargain embodied by the Sales Agreement entered between the parties. Therefore, Buyer covenants and agrees that if, following the date of the applicable Sales Document, but prior to the delivery of the goods or services identified on such Sales Document, Seller's cost for any good or service required to be delivered to Buyer thereunder increases beyond the Standard Cost, then Buyer shall be responsible for the payment of such increase following written notice by Seller to Buyer, notwithstanding anything to the contrary set forth in any document executed by the parties.

5. Shipment.

All products are sold ex works at their shipping point, as identified by the Seller, and all transportation costs and expenses shall be the responsibility of the Buyer, unless otherwise mutually agreed upon in advance. Unless specified on the purchase order by the Buyer and agreed upon by Seller, the Seller reserves the right to select the means of transportation and routing. All risks of loss and damage to the products shall be the responsibility of the Buyer after delivery of the product to the carrier. Seller shall attempt in good faith to effect delivery in accordance with the instructions set forth on the face of the Sales Document, or on such other schedule as Seller may provide to the Buyer in any order acknowledgment or other response to an order, but Seller shall not be responsible or liable for any delays or failures to effect delivery. Seller expressly reserves the right, in its sole discretion (i) to effect delivery of products ordered in any number of separate shipments and (ii) to effect delivery on or prior to the original date provided for in the Sales Document, notwithstanding the Buyer's request that delivery be made at a later date. Seller shall in no event be responsible or liable for delay or failure to effect delivery due to any cause which is unavoidable or beyond Seller's reasonable control and which prevents, impairs or adversely affects in any way Seller's performance hereunder, including but not limited to war, fire, flood, natural disaster, strike, labor dispute, act of God, governmental action, civil disturbance, accident, or inability to obtain or use materials, labor, equipment, facilities or transportation; in such cases. Seller shall have the right, at its option and without penalty or any liability for breach, to terminate all or any part of this order, or to reschedule delivery within a reasonable time.

6. Returns.

Except as set forth in Section 11, the return of any product MUST be pre-approved by Seller prior to initiating a return within ten (10) business days after delivery thereof (the "Return Goods Authorization"). An approved return will be assigned a Return Goods Authorization number ("RGA Number") by Seller. All returns must have an RGA Number written on the box and a copy of a duly completed and legible Return Goods Authorization form affixed to the outside of the box(s) being returned. The Return Goods Authorization shall become void if all products are not actually received by Seller or its designee within fifteen (15) days of the issue date of the Return Goods Authorization. Products must be returned in the original packaging unless otherwise agreed upon by Seller. Products returned to Seller without an RGA Number will be returned to Buyer at its expense and will not be credited to the Buyer's account. The Buyer is responsible for all return shipping costs and expenses unless otherwise agreed upon in advanced by Seller. Any delay, damage or loss that occurs during the return process shall be the sole responsibility of the Buyer in all circumstances.

7. Restocking Fee.

All returns are subject to a restocking charge in the amount of the greater of (i) Fifty Dollars (\$50) or (ii) up to twenty five percent (25%) of the gross sales price of the order.

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8. Cancellation.

Orders accepted by Seller may not be cancelled by the Buyer without the Seller's prior written consent, and, in Seller's sole and absolute discretion, if appropriate, following payment of a cancellation charge.

9. Credit.

Seller may refuse to extend or refuse to continue extending credit to Buyer at any time, in Seller's sole and absolute discretion. If the total amount due for outstanding orders submitted by the Buyer to Seller exceeds the credit limit established by Seller for the Buyer, then the Seller may do any one or more of the following, in its sole and absolute discretion: (i) refuse to honor orders that exceed such credit limit; (ii) refuse to deliver goods ordered; (iii) require the Buyer to pay cash before delivery for any shipment in excess of such credit limit; and/or (iv) extend the Buyer's credit limit.

10. Product Changes.

Seller expressly reserves the right, at any time and without notice, to discontinue the distribution or change the specifications of any product, and no such change in specifications shall affect any order of such product by Buyer, provided however, that any product that shall have been subject to a change in specifications shall be certified to meet or exceed the specifications agreed upon by the parties in the applicable Sales Document.

11. Counterfeit Goods Prevention.

- (a) Supplier represents and warrants that Counterfeit Goods are not contained in Goods delivered to Buyer through the implementation of policies that include prevention, detection and risk mitigation methods to protect against the use of Counterfeit Parts.
- (b) Supplier shall purchase parts directly from the Original Component Manufacturer (OCM) / Original Equipment Manufacturer (OEMs), or from the OCM authorized or franchised distributor. Procurement through an independent distributor, non-franchised distributor or broker is NOT authorized. A certificate of conformance shall accompany each shipment of Goods delivered, along with OCM/OEM documentation that authenticates traceability of the components to that applicable OCM. If an original OEM/OCM certificate is NOT available, distributor shall provide a De-lid and Die Verification Report for the supplied parts verifying authenticity of the parts and such other documentation, testing and/or other information as Buyer shall reasonably request; however, the submission of such additional items shall not relieve Supplier of its obligations hereunder.
- (c) In the event Supplier becomes aware or suspects that it has furnished Counterfeit Parts, it shall immediately notify Buyer. When requested by Buyer, Supplier shall provide (if available) Authorized Supplier documentation that authenticates traceability of the parts to the applicable Authorized Supplier.
- (d) In the event that Goods delivered under this Order are, or include, Counterfeit Parts, Supplier shall promptly investigate, analyze and report in writing to Buyer whether such Counterfeit Parts should be replaced with genuine parts conforming to the requirements of this Order, or whether an alternative solution is recommended to meet the Order requirements at Supplier's sole expense. The parties shall then agree upon the appropriate course of action.
- (e) Supplier shall include this clause or reasonably equivalent provisions in all subcontracts for the delivery of Goods that will be furnished to or included in Goods furnished to Buyer.

12. Exclusion of Warranties; Limitation on Liability.

It is the sole and exclusive responsibility of Buyer to determine the suitability of any and all products for the Buyer's use.

THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF SELLER WHICH EXTEND BEYOND THE DESCRIPTION OF THE PRODUCTS ON THE FACE HEREOF. THIS EXCLUSION MEANS THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY AND NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE. THIS EXCLUSION ALSO MEANS THAT SELLER GRANTS NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND NONE SHALL ARISE OUT OF ANY SALE UNDER THIS AGREEMENT OR OUT OF EITHER PARTY'S CONDUCT.

Liability of Seller under or in connection with any sale of products shall be limited, at the sole option of Seller, to one of repair of, replacement of, or a refund of the purchase price of any products or parts thereof (a) with respect to which Buyer notified Seller of Buyer's claim of nonconformity hereunder within thirty (30) days after delivery thereof, and (b) which shall be returned to Seller by Buyer promptly after delivery as provided herein, and (c) which is determined by Seller to be nonconforming under the provisions hereof; failure by Buyer to notify and return any such products to Seller as described above shall constitute a waiver by Buyer of any and all claims of any kind with respect thereto. If any products are returned without a Return Goods Authorization and a statement of the claimed nonconformity, such products will be returned to Buyer at its expense and will not be credited to the Buyer's account. The foregoing remedy shall constitute the sole and exclusive remedy of Buyer under or in connection with any sale of products. Except as specifically provided herein, Seller shall not be responsible or liable for any costs, expenses or damages of Buyer in connection with any removal, repair or replacement (including any attempts or actions relating thereto) of any allegedly defective products, and no charge or set off of any kind of Buyer relating thereto shall be made against Seller without prior and specific written approval of Seller.

IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY IN CONNECTION WITH THE PRODUCTS OR ANY SALE.

13. Modification and Cancellations.

Except as expressly provided herein, the terms and conditions hereof may not be modified, terminated, or repudiated, in whole or in part, except by a writing executed by an authorized officer of Seller. Seller may, at its sole option, treat any attempted modification, termination or repudiation to which it does not assent in writing as a breach of the entire agreement and recover from Buyer all of Seller's damages (including without limitation special, indirect, consequential and incidental damages) resulting therefrom or arising in connection therewith. Upon any breach by Buyer or failure by Buyer to comply with any of the terms and conditions hereof, or if Buyer becomes unable to conduct its normal business operations (including inability to meet its obligations as they mature) or becomes the subject of any proceeding under any state or federal bankruptcy law or other law for the benefit of creditors or relief of debtors or makes any assignment for the benefit of creditors, Seller shall have the right immediately to cancel or terminate any and all agreements with or obligations to Buyer relating to sales of products or services in whole or in such part as Seller in its sole judgment shall deem expedient, and recover from Buyer all of Seller's damages (including without limitation special, indirect, consequential and incidental damages) resulting therefrom or arising in connection therewith.

14. Waiver.

Seller shall not be deemed to have waived any provision hereof, or any breach by Buyer of any provision hereof, unless specifically set forth in writing and executed by an authorized officer of Seller, and no waiver by Seller of any provision hereof or any breach by Buyer hereunder shall constitute a waiver of such provision or breach on any other occasion.

15. Separability.

The invalidity or unenforceability, in whole or in part, of any provision, term or condition hereof shall not affect in any way the validity and enforceability of the remainder of such provision, term or condition or of any other provision, term or condition hereof.

16. Independent Contractors.

Seller, its agents, vendors, subcontractors, employees, and those under its control shall perform all activities under the Sales Agreement as independent contractors and shall not be deemed to be employees or agents of Buyer for any purpose whatsoever. No act or order of Buyer shall be deemed to be the exercise of supervision or control of the performance of services of Seller.

17. Governing Law.

The terms and conditions hereof and the transactions contemplated hereby shall be governed by, and construed and interpreted in accordance with the laws of the State of Utah, U.S.A., excluding its conflict of laws provisions.