



## Terms and Conditions

**THESE TERMS AND CONDITIONS GOVERN THE SALE OF ALL PRODUCTS AND SERVICES ("PRODUCTS") BY CNS SYSTEMS, INC. AND ITS DIVISIONS AND SUBSIDIARIES ("SELLER") AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION ("PURCHASE ORDER") FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.**

**1. ORDERS.** Orders shall be initiated by Buyer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Seller. Orders shall identify the Products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All orders are subject to acceptance by Seller. No orders for standard Products ("Standard Products") may be cancelled or rescheduled without Seller's consent, which consent may be given by Seller in its sole discretion. Seller reserves the right to allocate sales of Products among its customers in its sole discretion. Orders for special, custom, value-added and other non-standard Products, including Products to be assembled in kit form, Products of manufacturers which do not appear on Seller's line card, work-in-process and Products otherwise identified by Seller as "NCNR" or "Non-Cancelable and Non-Returnable" ("Non-Standard Products") shall be non-cancelable and non-returnable.

**2. PRICES.** Prices shall be as specified by Seller and shall be applicable for the period specified in Seller's quote. If no period is specified, prices shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in Seller's costs or other circumstances beyond Seller's reasonable control. Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If Seller shall be liable for or shall pay any of the foregoing, Buyer shall pay it to Seller in addition to the price of the Products.

**3. TERMS OF PAYMENT.** Payment shall be net thirty (30) days from date of invoice or as otherwise specified by Seller. Buyer agrees to pay the entire net amount of each invoice from Seller pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by Seller, which may in its sole discretion at any time change the terms of Buyer's credit, require payment in cash, bank wire transfer or by official bank check and/or require payment of any or all amounts due or to become due for Buyer's order before shipment of any or all of the Products. If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Buyer. Buyer agrees to submit such financial information from time to time as may be reasonably requested by Seller for the establishment and/or continuation of credit terms. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing from Buyer to Seller, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing from Buyer to Seller, and the acceptance by Seller of such check shall not constitute a waiver of Seller's right to pursue the collection of any remaining balance. Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at the rate of one and one-half (1-1/2%) percent per month or such lower rate as may be the maximum allowable by law. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to reimbursement for costs of collection and reasonable attorneys' fees.

**4. DELIVERY AND TITLE.** All shipments by Seller are F.O.B. point of origin and all transportation charges shall be paid by Buyer in addition to the price of the Products. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments, which shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.



**5. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS.** Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by Seller without a Return Material Authorization ("RMA") Number, which may be issued by Seller in its sole discretion. Returned Products must be in original manufacturer's shipping cartons complete with all packing materials. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products with an approved RMA will be returned to the Buyer prepaid (best way). Products not eligible for return shall be returned to Buyer, freight collect.

**6. FORCE MAJEURE.** Seller shall not be liable for failure to fulfill its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. Seller's time for performance of any such obligation shall be extended for the time period of such delay or Seller may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Buyer.

**7. SELLER'S LIMITED WARRANTY.** Seller warrants to Buyer, and only to Buyer, that upon delivery to the Buyer the products purchased hereunder shall be designed and manufactured to conform to the products specifications and all products are and will be free from defects in material and workmanship for a period of twelve (12) months from date of shipment. During the warranty period, seller's liability is limited to replacing, repairing or issuing credit (at seller's discretion) for any product that is returned to seller by the original purchaser freight prepaid and which upon inspection is determined by seller to be defective in materials or workmanship. Seller's repair or replacement of a defective product as provided in this section is Buyer's exclusive remedy for a defective product, and is made subject to the terms of this warranty. Warranty repair or replacement does not extend the original warranty period.

**7.1 WARRANTY EXCLUSIONS.** THE FOREGOING PRODUCT LIMITED WARRANTY SHALL ONLY APPLY IN THE EVENT AND TO THE EXTENT THAT (A) THE PRODUCT IS PROPERLY AND CORRECTLY INSTALLED, CONFIGURED, INTERFACE, MAINTAINED, STORED, AND OPERATED IN ACCORDANCE WITH SELLER'S APPLICABLE DOCUMENTATION AND SPECIFICATIONS, AND (B) THE PRODUCT IS NOT MODIFIED OR MISUSED.

**7.2 WARRANTY DISCLAIMER.** The foregoing limited warranty terms state Seller's entire liability, and Buyer's exclusive remedies, relating to Seller's products. Except as otherwise expressly provided herein, the Product, accompanying documentation and materials are provided "as-is" and without express or implied warranty of any kind by Seller, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, title, and noninfringement. The stated express warranties are in lieu of all obligations or liabilities on the part of the Seller arising out of, or in connection with, any Product.

**8. LIMITATION OF LIABILITIES.** WITHOUT LIMITING THE FOREGOING, SELLER'S ENTIRE LIABILITY TO BUYER UNDER OR FOR BREACH OF THESE TERMS SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY BUYER TO SELLER UNDER THE CONTRACT. FURTHER, NEITHER SELLER NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES OR OTHER DAMAGES, OR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, DOWNTIME AND USER TIME OR FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE PRODUCT, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PRODUCT IS LIMITED IN DURATION TO THE DURATION OF THE FOREGOING WARRANTY.

**9. USE OF PRODUCTS IN LIFE SUPPORT, NUCLEAR, WEAPONS SYSTEMS AND CERTAIN OTHER APPLICATIONS.** Products sold by Seller are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (1) Buyer acknowledges that such use or sale is at Buyer's sole risk; (2) Buyer agrees that Seller and the manufacturer of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (3) Buyer agrees to indemnify, defend and hold Seller and the manufacturer of the Products harmless from and against any and all claims, damages, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.



**10. EXPORT CONTROL.** The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

**11. FEDERAL CONTRACTS.** For products acquired pursuant to Federal Acquisition Regulations, the following shall be construed to be incorporated herein: (1) Equal Opportunity (FAR 52.222-26); (2) Affirmative Action for Special Disabled and Viet Nam era Veterans (FAR 52.222-35); (3) Clean Air and Water (FAR 52.223-2); (4) Certification of Non-segregated Facilities (FAR 52.222-21); and (5) Affirmative Action for Handicapped Workers (FAR 52.222-36). No other Federal Acquisition Regulations shall be construed to apply to Seller without Seller's written agreement thereto.

**12. STATEMENTS AND ADVICE.** If statements or advice, technical or otherwise, are offered or given to Buyer, such statements or advice shall be deemed to be given as an accommodation to Buyer and without charge and Seller shall have no responsibility or liability for the content or use of such statements or advice.

**13. INTELLECTUAL PROPERTY.** If an order includes software or other intellectual property, such software or other intellectual property is provided by Seller to Buyer subject to the copyright and user license, the terms and conditions of which are set forth in the license agreement accompanying such software or other intellectual property. Nothing herein shall be construed to grant any rights or license to use any software or other intellectual property in any manner or for any purpose not expressly permitted by such license agreement.

**14. GENERAL.** As used herein, terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. No rights, duties, agreements or obligations hereunder may be assigned or transferred by either party, by operation of law, merger or otherwise, without the prior written consent of the other. Any attempted or purported assignment shall be void. Notwithstanding the foregoing, Seller's obligations under these Terms and Conditions may be performed by divisions, subsidiaries or affiliates of Seller. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Maryland, U.S.A. excluding any law or principle which would apply the law of any other jurisdiction. The United Nations Convention for the International Sale of Goods shall not apply.

**15. PERSONAL DATA and PRIVACY.** The use of any personal data collected or exchanged in connection with any orders for Products shall be governed by Seller's Privacy Policy as updated from time to time, the terms of which are incorporated herein by reference as if fully set forth herein. A copy of Seller's Privacy Policy may be obtained from its Website.