



NextInput, Inc. Terms and Conditions of Sale for Standard Product

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- A. The term "Seller" means NextInput, Inc., and/or its present and future subsidiaries. The term "Buyer" means the third party placing the purchase order.
- B. No contractual relationship between Seller and Buyer will arise until such time as Buyer has placed an order which has been accepted by Seller.
- C. Stenographic and clerical errors are subject to correction.
- D. Subject to the provisions hereof, all quotes submitted are firm for 30 days from the date of the quotation unless indicated differently on the face of the quotation or withdrawn earlier by written notice. Alterations or changes of quotations not acknowledged and confirmed acceptable by the buyer within 30 days from the quotation date may be made at the discretion of Seller without notice.
- E. Orders are subject to all of Seller's Standard Terms and Conditions printed below.

1. **SCOPE:** The terms and conditions of sale contained herein, and as amended by Seller from time to time, apply to Seller's quotations and purchase orders placed by Buyer on Seller. These terms and conditions may in some instances conflict with some of the terms and conditions on Buyer's form of purchase order or otherwise specified by the Buyer or these terms and conditions may cover matters not addressed in Buyer's documentation. Therefore, acceptance of the Buyer's order is made only on the express understanding and condition that insofar as the terms and conditions of this acceptance conflict with any terms and conditions of the Buyer's order or cover matters not addressed in Buyer's documentation, Seller's terms and conditions govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgment, by implication, or by acceptance and payment for goods ordered. Seller's failure to object to provisions contained in any communication from Buyer will not be deemed a waiver of the provisions of this acceptance. Any changes from the terms and conditions of sale contained herein must be specifically agreed to in writing by an authorized officer of Seller before becoming binding on the Seller. All orders or contracts must be approved and accepted by the Seller at its head office at 980 Linda Vista Ave, Mountain View, CA 94043. From time to time, Seller may accept certain of Buyer's terms and conditions of sale by signing Buyer's proposed sale agreement. If such acceptance is preceded or accompanied by Seller's interpretation of Buyer's terms and conditions, such interpretation shall control the construction or interpretation of the meaning of Buyer's terms and conditions.

2. **PRICES:** Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on Seller's acknowledgment.

Prices listed on Seller's quotation, and subsequent purchase order acknowledgment, are firm and not subject to audit or price redetermination or renegotiation, except that at Seller's sole discretion any and all prices are subject to adjustment either directly or by the addition of a precious metals surcharge in order to cover the cost of precious metals utilized by Seller in supplying goods.

If Buyer fails to take delivery hereunder of the quantity of goods upon which a quantity discount price, if any, is based, Buyer will be back-billed an amount based upon the quantity actually delivered hereunder and upon the quantity pricing schedule in effect at the time the order was placed. Such charges shall be in addition to any cancellation charges.

Prices apply only if the quantity ordered hereunder is released within 12 months and shipments scheduled no more than 12 months from the date Seller received Buyer's order. Otherwise, Seller's standard prices in effect on the date of receipt by Buyer of the quantity actually shipped apply, and Buyer shall pay the difference in price, if any.

3. **TERMS AND METHOD OF PAYMENT:** Unless expressly specified otherwise on the Seller's sales confirmation, where Seller has extended credit to Buyer, terms of payment shall be net 30 days from the date of Seller's invoice. All payments shall be in U.S. Dollars unless otherwise agreed in writing. Buyer will be charged 1.5% per month (but not more than is permitted under applicable law) on overdue accounts. If Buyer fails to make payment for goods delivered as herein provided, or if, in Seller's opinion, a change in Buyer's financial condition or other circumstances has created reasonable concerns as to Buyer's credit worthiness, Seller may at any time limit or cancel the credit of Buyer as to time and amount and may demand payment in cash before delivery of any part of the goods. On any order on which credit is not extended by Seller, shipment or delivery shall be made at Seller's election. Payment must be made for the goods without regard to whether Buyer has made or will make any inspection of the goods.

4. **INSPECTION:** Buyer shall notify Seller upon receipt of goods of all discoverable defects, including quantity shortages, incorrect product, and visible defects, but no later than 30 days of receipt. No return of goods will be accepted by Seller without a Return Material Authorization ("RMA") Number and returned goods must be in original manufacturer's shipping cartons complete with all packing materials. In the event that Buyer does not either complete final inspection and accept the goods or present a rejection notice to Seller in writing within 30 days of delivery, the goods shall be conclusively deemed accepted. At that time, Buyer's only recourse or remedy for non-conforming or defective goods shall be Seller's standard warranty. Buyer's inspection and/or acceptance tests shall not exceed the inspection and/or test procedures customary in the industry for the goods furnished and is at Buyer's expense.

5. **SELLER WARRANTY:** Seller warrants to Buyer that goods sold hereunder that are standard products of Seller will conform to the applicable Seller Specifications and be free from defects caused by defective material and faulty workmanship for a period of one (1) year from date of shipment to Buyer. For goods that are not standard products of Seller, such as developmental or custom-designed goods, Seller warrants to Buyer that such goods delivered hereunder will conform to the applicable published NextInput datasheet specification and be free of defects in material and faulty workmanship upon receipt by Buyer. "Specification" as used herein shall mean the guaranteed minimum and maximum levels set forth in Seller's published datasheets in effect at time of sale. Seller further warrants that at time of delivery, Seller has free and clear title to the goods without liens and encumbrances.

SELLER MAKES NO WARRANTY OR GUARANTEE WHATSOEVER WITH RESPECT TO SALES OR ORDERS FOR NONSTANDARD, SUB-GRADE GOODS OR PURCHASES THROUGH UNAUTHORIZED SALES CHANNELS. GOODS SOLD UNDER SUCH SALES OR ORDERS ARE FURNISHED "AS IS" AND "WITH ALL FAULTS."

Seller's sole and maximum liability for breach of its warranties herein is limited to the obligation, at Seller's sole discretion to rescreen, reprocess or provide replacement goods, or credit Buyer's account, any goods delivered hereunder which either become defective or fail to meet the applicable specifications during



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the warranty period and which are found by Seller to be defective under the terms of this warranty, provided that (a) Seller is notified in writing by Buyer within 30 days after discovery of defects or failure to meet Specifications; (b) Buyer obtains a Return Material Authorization Number from Seller prior to returning any defective goods to Seller; (c) the defective goods are returned to Seller, transportation charges prepaid by Buyer (provided, however, that if upon examination by Seller, it determines that the goods are entitled to this warranty, then Seller shall be responsible for all transportation charges to and from Seller's facility); (d) the defective goods are received by Seller for adjustment no later than four (4) weeks following the last day of the warranty period; and (e) Seller's examination of such goods shall disclose that such defects or failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, damage by rain, fire or casualty or by accident or negligence in use, storage, transportation or handling. In addition, Seller shall have no liability to Buyer to the extent such failure is caused by non-compatibility with other components used by Buyer. In the event that any one or more of the foregoing conditions is not satisfied, Seller shall have no liability under this warranty whatsoever. Buyer has an obligation to mitigate any damages related to integration of defective or non-conforming Parts. If Buyer has knowledge that such goods are defective or non-conforming or Seller has advised Buyer that goods are defective or non-conforming and in either event Buyer integrates such defective goods, Seller shall have no liability to Buyer for any damages incurred by Buyer as a result. In the event that the foregoing exclusive remedy under this warranty is determined upon judicial review to have failed in its essential purpose through no fault of Buyer, the alternate exclusive remedy shall be the refund of the purchase price of the non-conforming or defective goods. Any repairs to or alterations on the goods shipped hereunder must be authorized in writing by Seller to prevent voiding Seller's warranty.

Seller's goods may be prohibited for shipment to certain countries, entities or individuals under U.S. export regulations. Seller is not liable to Buyer for any delays or failure to obtain the necessary export license.

SELLER'S OBLIGATION TO HONOR THESE WARRANTIES IS CONTINGENT UPON SELLER'S RECEIPT OF ON-TIME PAYMENT IN FULL FOR THE GOODS ENTITLED TO THIS WARRANTY. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE.

THE FOREGOING STATES THE ENTIRE WARRANTY LIABILITY OF SELLER.

6. BUYER WARRANTY: Acceptance of goods is a warranty by Buyer that Buyer is solvent as of the date of shipment. With respect to goods delivered hereunder, Buyer agrees to accept responsibility for (i) their selection to achieve Buyer's intended results, (ii) their use, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs or services not provided by Seller and used in connection with goods delivered hereunder. Buyer further warrants that it is buying for its own internal use and not for resale, unless otherwise agreed between Buyer and Seller under separate written agreement.

7. INFRINGEMENT: With respect to goods manufactured solely to Seller's designs and specifications, Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any such goods furnished hereunder infringe any patent(s), copyright(s) or trademark(s), or for misappropriation or use of any trade secret(s), or for unfair competition, if Seller is notified promptly in writing of such suit or proceeding and is given full and complete authority, information and assistance by Buyer for such defense. Seller shall pay all damages and costs finally awarded against Buyer in any such suit or proceeding, but Seller shall not be responsible for any compromise thereof made by Buyer without the written consent of Seller. If infringement is alleged prior to the completion of delivery of the goods, Seller may decline to make further shipments without being in breach of any agreement. In the event that such goods are held in such suit or proceeding to be infringing and their use is enjoined, or if in the opinion of Seller such goods are likely to become the subject of a claim of infringement, Seller at its sole discretion and at its own expense, may either (a) procure for Buyer the right to continue using such goods; (b) modify such goods so that they become non-infringing; (c) replace such goods with non-infringing goods; or (d) accept the return of such goods, granting Buyer a refund or credit equal to the depreciated value. Seller's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives to Buyer written consent for such continuing alleged infringement.

Any provision herein to the contrary notwithstanding, Seller shall have no obligation to Buyer (to defend or make any payment to or for Buyer) for any infringement, misappropriation or misuse claimed by any third party or parties if any such claim arises, in whole or in part, (a) as a result of a modification of the goods not introduced or approved by Seller; or (b) as a result of the interconnection or use of the goods in combination with goods or other devices or with a manufacturing or other process; or (c) the use of the goods in other than an application recommended by Seller or (d) compliance with Buyer's design, specifications and/or instructions. If Buyer alleges intellectual property infringement against a third party pursuant to Buyer's intellectual property portfolio and as a result the alleged infringement cross claims against Buyer alleging among other things infringement by goods manufactured by Seller, Seller's liability for the resulting attorney fees and costs will be proportional to the extent to which Seller's goods, as opposed to third party goods, are found to have infringed third party intellectual property rights.

With respect to goods manufactured to Buyer's designs or specifications, Buyer shall defend any suit or proceeding brought against Seller, either severally or jointly with Buyer, insofar as such suit or proceeding is based on a claim, that any such goods furnished hereunder infringe (either direct or contributory) any patent(s), copyright(s), or trademark(s), or for misappropriation or use of any trade secret(s) or for unfair competition, arising from (i) compliance with Buyer's designs, specifications, or instructions; (ii) the use of any item or any part thereof, furnished hereunder, in combination with goods not supplied by Seller, or (iii) in connection with a manufacturing or other process utilizing any item, or part thereof, furnished hereunder. Seller shall notify Buyer promptly in writing of such suit or proceeding and give Buyer full and complete authority, information and assistance for such defense. Buyer shall pay all damages and costs finally awarded against Seller in any such suit or proceeding, but Buyer shall not be responsible for any compromise thereof made by Seller without the written consent of Buyer.



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Buyer agrees not to infringe on Seller's intellectual property with respect to any equipment, component, software, or other items delivered to the Buyer by the Seller. Buyer shall not reverse engineer, disassemble, decompile, decapsulate, cross-section or otherwise analyze the physical construction of, any such items nor assist and/or commission a 3rd party to perform any such activity outlined above.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT THERETO.

8. NO LICENSE: Goods or any parts thereof sold hereunder may be protected by intellectual property rights of Seller, including, but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of goods or any parts thereof hereunder nor the provision by Seller of any supporting or related documentation, technical information or advice shall confer on Buyer any license, express or implied, under any intellectual property rights of Seller covering or related to (i) apparatus or circuits in which the goods or parts thereof may be used; (ii) a process, machine, use or application in connection with which the goods or parts hereof may be used; (iii) the process of their manufacturer; or (iv) a combination in which the goods or parts hereof may be used.

9. TAXES: Any tax or government charge by any federal, state or municipal government applicable to the goods sold hereunder now imposed or hereafter becoming effective during the term of any contract made hereunder, except for Seller's franchise taxes and taxes on Seller's net income, shall be added by Seller to the sales price where Seller has the legal obligation to collect or pay same, and shall be paid by Buyer unless Buyer provides Seller with a proper tax-exemption certificate. Buyer shall pay any duties, levies, taxes, brokerage fees or customs fees imposed in the Buyer's country to shipments made under this contract.

10. TITLE AND DELIVERY:

A. For shipments outside of the United States, Seller shall make the goods available at its shipping dock for pickup by Buyer or Buyer's designee (EX WORKS - INCOTERMS 2010), unless otherwise agreed, and Buyer shall be responsible for all shipping charges, including freight, insurance, taxes, import duties and any other related charges. In instances where the parties determine that Seller shall select the method of transportation and the carrier, unless otherwise stipulated by Seller in the applicable sales order acknowledgement or other shipping documentation, (i) Seller shall pay for the freight charges to bring the goods to the named destination; provided that Buyer shall reimburse Seller for all (or a portion of) such costs as set forth in the applicable invoice issued by Seller to Buyer, (ii) Buyer shall pay for all insurance, taxes, import duties and any other related charges, and (iii) Buyer shall be responsible for carrying out all customs formalities to import the goods, including acting as importer of record and paying any applicable costs and expenses incurred in connection therewith. In any event, title and risk of loss transfer to Buyer when Seller tenders the goods to a common carrier at the Seller designated location for shipment to Buyer.

B. For shipments to the United States, Seller shall make the goods available at its shipping dock for pickup by Buyer or Buyer's designee (EX WORKS - INCOTERMS 2010) and, unless otherwise stipulated by Seller in the applicable sales order acknowledgement or other shipping documentation, (i) Buyer shall select the method of transportation and the carrier, and (ii) Buyer shall be responsible for all shipping charges, including freight, insurance, taxes, import duties and any other related charges. Title and risk of loss transfer to Buyer when Seller tenders the goods to a common carrier at the Seller designated location for shipment to Buyer.

11. SOFTWARE: "Software" as used herein means goods that are software, including, without limitation, software embedded in Seller goods, stand alone software and downloadable software. Customer acknowledges that such software is proprietary, copyrighted and may be protected by patents. All Software is licensed to Buyer, subject to a license agreement, and title to Software remains with the applicable licensor(s). Buyer agrees to be bound by such license agreement in addition to these terms and conditions of sale. Buyer shall not duplicate, disassemble, decompile, reverse engineer, modify, create derivative works, or otherwise change Software or its form except to the extent it is permitted by law. Software incorporated in or packaged with Seller hardware goods shall be used solely by Buyer for the use of the hardware goods as authorized by Seller, and Buyer shall have no other rights with respect to such Software, unless otherwise stated in the Software License Agreement ("SLA").

12. DELIVERY SCHEDULE: Buyer understands that any delivery schedule set forth herein or in any subsequent order or release is estimated only and is presented in good faith by Seller. Seller will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery schedule but shall not be liable to Buyer for failure to meet any delivery schedule or for the costs or procurement of substitute goods. Seller reserves the right to make deliveries in installments. Delivery of a quantity that varies from the quantity specified in Buyer's order shall not relieve Buyer of its obligation to accept delivery and pay for the goods ordered. Delays or changes in schedules due to Buyer directed actions are subject to price adjustments.

Seller reserves the right to allocate production and deliveries among its various customers under any circumstances.

Buyer will be deemed to have waived any and all claims for shipments containing less than the number of goods indicated on the shipping documents unless written notice of such claims is received by Seller within 30 days after receipt of shipment.

13. CANCELLATIONS: No cancellations or reschedules will be accepted within 30 days of the earliest requested ship date. All cancellations and reschedules of orders by the Buyer greater than 30 days may result in a charge to Buyer. Any such charge will be determined by the Seller based on such factors as whether the product was manufactured specifically for Buyer, Seller's ability to change its production schedule within the period of the notice provided by Buyer, whether Seller acquired or allocated particular supplies or equipment to meet Buyer's order, etc.

14. NON-WAIVER DEFAULT: Each shipment made under any order will be treated as a separate sale and transaction, but in the event of any default by Buyer, if Seller elects to continue to make shipment, its action will not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.



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15. **FORCE MAJEURE:** Seller shall not be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to causes beyond the reasonable control of Seller, including, without limitation, strike, labor disputes, shortages of material, war, riot or civil commotion, acts of the public enemy, insurrection, sabotage, or fire, earthquakes, flood or other acts of God. The period for performance for the party affected by such a cause shall be extended by the duration of the condition, provided, however, if any such delay shall continue for more than 120 days from the start of the cause of delay, the quantities undelivered during such period of delay or to be delivered, may be canceled at Seller's election without liability of Seller to Buyer by written notice to Buyer at any time.

16. **ASSIGNS:** Any contract made hereunder is binding upon and inure to the benefit of the successors and assigns of the entire business and good will of either Seller or Buyer, or of that part of the business of either used in the performance of such contract but is not otherwise assignable. Seller may subcontract any part of the work or services to be provided hereunder as Seller deems necessary. Buyer affirms that there exists no third party beneficiaries to Buyer's rights hereunder unless Buyer specifically identifies such beneficiary on the face of Buyer's order or Buyer's acceptance of Seller's quotation.

17. **MODIFICATION OF STANDARD TERMS AND CONDITIONS:** No addition to or modification of any of the provisions herein or upon the face or reverse of any order shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller located in San Jose, California, U.S.A.

18. **LAW:** This Agreement is governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods. The sole jurisdiction and venue for actions related to the subject matter hereof is the state and U.S. federal courts in the State of California, located in Santa Clara County, California, U.S.A.

19. **EXPORT CONTROL:** Buyer acknowledges that Seller will provide Buyer with technical data/technology, services, and/or products, in finished or unfinished state that may be subject to U.S. export controls under the laws and regulations of the United States (collectively "Export Controlled Technology"). U.S. export control laws and regulations include, but are not limited to, the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. §§ 120 et seq., and/or the Export Administration Regulations, 15 C.F.R. §§ 730 et seq. Buyer warrants and agrees that it shall not export or reexport any Export Controlled Technology or any technical data/technology or product derived from the Export Controlled Technology, except pursuant to a U.S. government license or other approval, or upon determination that such export may be lawfully exported without prior approval under a license exception, exemption, or other authority. Buyer acknowledges and understands that Seller may need to apply for export licenses in order to ship Export Controlled Technology to Buyer. Buyer agrees to provide such information, assurances, documentation or take such other steps as necessary to assist Seller in obtaining any export licenses, including, but not limited to, execution of end-user certifications, document marking, and supplemental agreements with respect to control and handling of Export Controlled Technology. In compliance with U.S. regulations regarding Technology and Software under Restriction ("TSR"), Buyer hereby agrees that, without express approval of Seller (pursuant to issuance of an export license from the Bureau of Industry and Security), Buyer will not reexport or release any technology, direct product of the technology, software, or source code related to the technology provided by Seller to Buyer to a national of a country specified in Country Groups D:1 or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 and as amended. Seller shall have no responsibility for delayed delivery or non-delivery resulting from (i) any governmental action under U.S. or other applicable law suspending or revoking a necessary export license or authorization, or (ii) any failure by Buyer to furnish reasonable assurance, upon request, of its compliance with applicable export requirements, or (iii) obtaining a necessary export license for the goods to be shipped hereunder.

20. **USE OF SELLER'S GOODS IN LIFE SUPPORT AND CERTAIN OTHER APPLICATIONS:** Goods sold by Seller are not designed, intended or authorized for use in life support, life sustaining, or other applications in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or severe property or environmental damage. Buyer acknowledges that use of Seller's goods in such product applications is understood to be fully at the risk of Buyer and that Buyer is responsible for verification and validation of the suitability of Seller's goods in such application. Buyer agrees that Seller is not liable, in whole or in part, for any claim or damage arising from use in such applications. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, damages losses, costs, expenses and liabilities arising out of or in connection with such use.

21. **LIMITATION OF LIABILITY: THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT SELLER'S LIABILITY HEREUNDER.**

EXCEPT FOR BODILY INJURY OR DEATH OF A PERSON, UNDER NO CIRCUMSTANCES WILL SELLER, ITS EMPLOYEES, OFFICERS OR DIRECTORS, AGENTS, SUCCESSORS OR ASSIGNS BE LIABLE TO ANYONE UNDER ANY PRODUCT ORDER, SCHEDULE OR TERMS AND CONDITIONS HEREIN UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT FORESEEABLE OR FORESEEN, FOR: (A) BUSINESS INTERRUPTION COSTS, COST OF REWORK, RETESTING, PROCUREMENT OF SUBSTITUTE GOODS, REMOVAL AND REINSTALLATION OF GOODS; OR (B) ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LITIGATION COSTS, LOSS OF DATA, PRODUCTION OR PROFIT, GOODWILL, LOSS OF REVENUE, OR LOSS OF UNITS; REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THERE IS A TOTAL AND FUNDAMENTAL BREACH OF THIS AGREEMENT OR WHETHER ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

THE LIMIT OF LIABILITY FOR ANY CLAIMS SHALL NOT EXCEED 20% OF THE AMOUNT PAID OR PREPAID ON ACCOUNT BY BUYER FOR THE GOODS GIVING RISE TO SUCH CLAIMS. BUYER SHALL BE DEEMED TO ASSUME ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM, OR IN CONNECTION WITH, THE USE OR MISUSE OF THE GOODS BY BUYER, ITS EMPLOYEES, CUSTOMERS AND OTHERS.

SELLER SHALL NOT BE LIABLE FOR AND BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY GOODS BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS.



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22. **RELATIONSHIP OF PARTIES:** Seller and Buyer expressly understand and agree that Buyer is an independent contractor in the performance of each and every part of this order, is solely responsible for all of its employees, agents and will indemnify Seller from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Buyer's activities or those of its employees or agents (including, without limitation, direct and indirect distributors or subdistributors), including without limitation unauthorized representations or warranties (or failing to effectively disclaim all warranties and liabilities on behalf of Seller to the same extent as disclaimed herein) to its customers.

23. **BASIS OF BARGAIN:** EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS HEREIN ARE MATERIAL, BARGAINED FOR BASES OF ANY ORDER OR CONTRACT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER ANY ORDER OR CONTRACT AND IN THE DECISION BY EACH PARTY TO ENTER INTO SUCH ORDER OR CONTRACT.

24. **PACKAGING:** Packaging for commercial shipment is included in the quoted price. When special or export packaging is specified involving a greater expense than the cost of commercial shipment included in the quoted price, a charge will be made to cover such extra expense. Reasonable care is exercised in packaging goods for shipment and no responsibility is assumed by Seller for delay, breakage, or damage after having made delivery to the carrier. All claims for breakage or damage must be made to the carrier, however, Seller will render reasonable assistance in securing satisfactory adjustment of such claims.

25. **CHANGES TO SPECIFICATIONS:** Seller reserves the right to change the specifications of any goods (including all statements and data appearing in Seller's catalogs, data sheets and advertisements). If such changes to specifications are made, Seller assumes no obligation to provide the change on goods previously purchased or to continue to supply discontinued goods. Seller may substitute goods manufactured to such modified specifications for those specified herein provided such goods substantially conform to the order or contract.

26. **PROPRIETARY DATA:** Buyer agrees not to use or disclose drawings, specifications, technical information or other data furnished by Seller and identified by Seller as confidential or proprietary data without the prior written consent of Seller. Buyer agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of Seller, regardless of whether any such improvement or modification was the creation of Buyer. Buyer further agrees to use all appropriate copyright and proprietary notices on all goods delivered hereunder regardless of their intended use. Buyer recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of the terms of this provision.

27. **TOOLING:** Unless otherwise expressly agreed in writing, Seller retains rights and title to and possession of any tooling, drawings, mask sets, tapes, fixtures, original documentation and intellectual property used in the furnishing of goods.

28. **GENERAL:** In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Buyer's property, Buyer's insolvency, or any voluntary or involuntary petition in bankruptcy by or against Buyer, Seller may terminate any order without further obligation or liability of Seller to Buyer.

In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.