



Standard Terms and Conditions for Product Sales

ALL PRODUCT SALES MADE BY POWERCAST CORPORATION ("Powercast") OR ANY AUTHORIZED DISTRIBUTOR OR RESELLER (EITHER POWERCAST OR SUCH RESELLER, THE "SELLER") TO THE PURCHASER ("BUYER"), ARE MADE ON THE FOLLOWING TERMS AND CONDITIONS ("TERMS AND CONDITIONS"):

1. **AGREEMENT.** These Terms and Conditions constitute the entire exclusive agreement between Seller and Buyer regarding the purchase and sale of Seller's devices and/or systems ("Products"). Any pre-printed terms proposed by Buyer which add to, vary from or conflict with these Terms and Conditions are hereby objected to and shall be void. Any conduct by Buyer indicating acceptance of these Terms and Conditions, and any acceptance by Buyer of any Products, shall constitute Buyer's acceptance of these Terms and Conditions.

2. **ORDERS.** All offers to purchase Products ("Orders") are subject to acceptance by Powercast. Powercast reserves the right to allocate the sale of Products among its customers. Orders for special, custom, or value-added Products, and Products specifically identified by Powercast as non-standard, are non-cancelable and non-refundable.

3. **PRICES, TAXES AND PAYMENT TERMS.** Product prices are exclusive of all federal, state or other government, excise, use, occupational, sales, value added tax (VAT), export, import or custom fees or duties or like taxes or duties now in force or enacted in the future ("Taxes"). In addition to the prices quoted or invoiced, Buyer shall pay any Taxes imposed by any government authority on, or measured by, the transaction between Seller and Buyer. Buyer shall reimburse Seller if Seller is required to pay Taxes at the time of sale or thereafter. All Products are invoiced upon shipment. Payment is due thirty (30) days after the date of invoice; provided, however, Seller reserves the right to require different payment terms based on a credit review of Buyer. Buyer shall pay each invoice in full without any deduction, counterclaim or setoff. Seller reserves the right to charge interest at the maximum rate permitted by law on any amount that is overdue, until paid in full. Interest shall accrue on a daily basis. Seller may change payment terms at any time, including requiring payment prior to delivery.

4. **DELIVERY, TRANSFER OF TITLE AND RISK OF LOSS.** Delivery dates are estimates. Seller will use commercially reasonable efforts to meet desired delivery dates, but will not be liable to Buyer in any way for, nor responsible for any losses caused as a result of, any late shipment. Seller shall not be responsible for any delays in delivery caused by strikes, flood, fire, other natural disaster or act of God, scarcity of the materials needed to procure the Products, governmental restrictions, or any other cause beyond the reasonable control of Seller. Buyer will accept and pay for partial shipments of Products. All Products are irrevocably accepted by Buyer upon delivery. Products will be delivered F.C.A. (Seller's designated facility) (INCOTERMS 2000). Title and risk of loss or damage to the Products will pass to Buyer when Seller tenders the Products to the freight forwarder at Seller's designated facility. Transportation charges will be paid by Buyer, or if prepaid, will be subsequently invoiced to Buyer and Buyer shall discharge such invoice in full within thirty (30) days of the date of said invoice. Buyer shall insure the Products against loss or damage during shipment. Partial and/or installment shipments are authorized and, in the case of contingencies beyond its reasonable control, Seller may allocate shipments among its customers.

5. SECURITY INTEREST. Seller hereby reserves a purchase money security interest in the Products sold and the proceeds thereof to secure payment of the purchase price. At Seller's request, Buyer will execute any financing statements or other instruments and take other actions as requested by Seller to perfect Seller's security interest which might arise pursuant to this Section 5.

6. CUSTOM PRODUCT. Buyer acknowledges that if this purchase is a special Order, the provisions of this paragraph supersede any conflicting general terms of these Terms and Conditions. Seller shall have exclusive rights to goods designed and manufactured for the unique needs of Buyer to Buyer's specifications or requirements, such as product made to military specifications ("Custom Product"). Seller shall retain all rights, title, and interest to and possession of designs, masks and manufacturing processes. Individual segments or parts of Custom Product designs, including but not limited to packaging and circuit/system design, are the property of Seller and may be used by Seller in other designs and may not be used by Buyer except as a part of Custom Product designed and manufactured by Seller. Prices and/or schedules for Custom Products are subject to change by Seller if any specifications are revised or supplemented or there are unforeseen difficulties with the design. All Custom Product is subject to a cancellation fee of 100% of the purchase price if canceled at any time after the order is placed. Custom Product shall be described in the purchase order at or before the time that its manufacture or assembly begins.

7. SALE CONVEYS NO LICENSE. The Products are offered for sale and are sold by Seller subject to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright or other intellectual property right of Seller or with respect to which Seller can grant licenses. Seller expressly reserves all its rights under such patents, copyrights or other intellectual property rights.

8. LIMITED WARRANTY. Seller warrants that the Products, when delivered by Seller or Seller's authorized distributor and for twelve (12) months following the delivery date (the "Warranty Period"), will be free from defects in material and workmanship and will substantially conform to Seller's publicly available specifications for such Products in effect at the time of delivery. In all cases, Seller has sole responsibility and discretion for determining the cause and nature of a Product defect, and Seller's determination with regard thereto shall be final. Buyer's exclusive remedy and Seller's sole liability for a breach of warranty reported to Seller during the Warranty Period shall be, at Seller's option, to replace or repair the affected Product, or to refund to Buyer the price of the Product depreciated over twelve (12) months on a straight-line basis. This warranty excludes prototypes or engineering samples of Products (which are provided "AS IS" meaning without any warranties of any kind from Seller), and Products that have been subject to abuse, misuse, mishandling, accident, alteration, neglect, unauthorized repair or installation, or procured through an unauthorized third party. Buyer shall not return Products without first obtaining a customer return material authorization (RMA) number from Seller. The limited warranty set forth in this Section shall not apply in the event of any act, error, neglect or default of the Buyer or any third party or in the event of any breach of this Agreement by Buyer. Seller does not warrant that Products will be free from design defects or errors. This warranty does not extend to any implementation by Buyer in an application or environment that is not contained within Seller's specifications, and does not extend for use of the Products as the principal mechanism in life-support applications or other applications that invoke potential risks of death, bodily injury or severe property or environmental damage ("Critical Applications"). SELLER'S PRODUCTS ARE NOT DESIGNED TO BE FAIL-SAFE, AND USE OF SELLER'S PRODUCTS IN ANY CRITICAL APPLICATIONS IS FULLY AND SOLELY AT THE RISK OF BUYER. THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE EXCLUSIVE. SELLER DISCLAIMS ALL OTHER

WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT AND ANY WARRANTY THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. NO WARRANTIES ARE MADE BY ANY OF SELLER'S LICENSORS OR SUPPLIERS. No agent, employee, sales representative or distributor of Seller has any authority to bind Seller to any affirmation, representation or warranty except as stated in this Section 8. Buyer hereby acknowledges that it has not entered into this transaction in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein.

9. EXPORT. Buyer shall comply with all applicable export laws and regulations including, without limitation, those administered by the U.S. Department of Commerce - Bureau of Industry and Security (U.S. Export Administration Regulations 15 CFR 730 et seq.) and shall not export, re-export, resell, transfer, or disclose, directly or indirectly, any Products or technical data, or the direct product of any Products or technical data, to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the U.S. government and/or any other applicable or relevant government or regulatory body. Buyer shall hold Seller harmless from any liability arising from Buyer's failure to comply with such laws, regulations and orders, or the provisions of this section.

10. FORCE MAJEURE. Neither Seller nor Buyer shall be liable for any loss, damage or penalty resulting from a failure to fulfill an obligation (other than payment of money) when such failure is due to causes beyond the party's reasonable control, including but not limited to supplier delay, force majeure, act of God, war, civil or labor unrest, fire, explosion or natural disaster. Nothing in this section relieves Buyer of the obligation to pay Seller for delivered Products.

11. CANCELLATION. Except as set forth herein, orders for Products are non-cancelable within thirty (30) days prior to the scheduled delivery date. Buyer may only cancel orders within thirty (30) days from the originally scheduled delivery date upon pre-payment to Seller of reasonable cancellation charges determined by Seller in its sole discretion, which charges shall include, but are not limited to, expenses already incurred for labor and material costs, restocking charges, storage costs, overhead, commitments made by Seller, and profit.

12. MODIFICATION. Seller may modify the specifications of Products and substitute Products manufactured to such modified specifications at any time without prior notice to Buyer, provided such Products substantially conform to the form, fit and function of the original product.

13. REVERSE ENGINEERING RESTRICTION. Buyer shall not reverse engineer, copy, disassemble, tamper with, or otherwise attempt to reconstruct any physical embodiments, prototypes, samples, methods, software or products provided hereunder to the Buyer. In the event any such actions nevertheless occur, all data and results and/or any inventions, discoveries, or works arising there from shall be solely owned by the Seller and the Buyer shall, at its expense, assign any such inventions or discoveries to the Seller.

14. PRODUCT REMARKING. Buyer shall not remark or modify the Product markings including, but not limited to, the product logo, part number, patent marking or other printed or attached labeling in any way. Buyer acknowledges and agrees that the warranty of Section 8 is void as to any Products on which Buyer has altered, removed, or remarked any portion of, the Product part number, date code, logo, or factory code.

15. LIMITATION OF LIABILITY. SELLER'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS AND/OR SALE OF PRODUCTS, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT RECEIVED BY SELLER FROM BUYER FOR THE PRODUCTS WHICH GIVE RISE TO SUCH LIABILITY OR CLAIMS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY BUYER, OR FOR ANY LOST PROFITS, LOSS OF DATA OR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, HOWEVER CAUSED, AND REGARDLESS OF THE THEORY ON WHICH SUCH CLAIM IS BASED. THE EXCLUSIONS AND LIMITATIONS OF THIS SECTION 15 ALSO APPLY TO ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF SELLER ARISING OUT OF THIS CONTRACT AND/OR SALE OF PRODUCTS. THE LIABILITY LIMITATIONS HEREIN SHALL CONTINUE TO APPLY EVEN IF AN EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SELLER DISCLAIMS ALL LIABILITY OF ANY KIND ON BEHALF OF SELLER'S LICENSORS AND SUPPLIERS. NOTHING IN THESE TERMS AND CONDITIONS SHALL IN ANY WAY LIMIT ANY APPLICABLE CONSUMER RIGHTS UNDER LOCAL LAW.

16. BANKRUPTCY. If Buyer enters U.S. bankruptcy proceedings, or becomes insolvent, transfers assets to its creditors, commences wind-up proceedings, or has a receiver appointed, or if any similar event occurs in any jurisdiction, Seller may, upon notice in writing, immediately cancel the applicable purchase contract without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to Seller.

17. INTELLECTUAL PROPERTY INFRINGEMENT. Seller shall have no obligation or liability to Buyer for any claim of infringement of any patent, copyright, mask work, trademark, or design or for any claim that Seller has misappropriated or unlawfully disclosed or copied or used any data or trade secrets. With regard to Seller's Products furnished to Buyer under this Agreement, Buyer shall indemnify Seller and hold Seller harmless for and Buyer shall be responsible for and pay any and all awards or damages assessed against Seller and any expenses incurred by Seller to defend against any claim arising out of (a) modifications or improper use made by any person or entity other than Seller, (b) conformance by Seller with specifications, designs or instructions provided by Buyer, or (c) the combination or incorporation of any Product, or of the elements of any Product, with any other circuitry, subassembly, products, equipment or materials not supplied by Seller. THE FOREGOING STATES SELLER'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE), AND BUYER'S LIABILITY AND OBLIGATION, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREFOR RELATING TO THE PRODUCTS.

18. PROPRIETARY INFORMATION. Seller may provide proprietary information to Buyer in connection with the Products. Such information shall remain the exclusive property of Seller, and Buyer shall protect such information using the same measures that Buyer uses to protect its own information of a similar nature, but not less than with a reasonable standard of care. Upon Seller's request, Buyer will return to Seller all documents containing Seller's proprietary information and retain no copies thereof. Buyer agrees that its obligation to protect Seller's proprietary information shall be ongoing and shall survive termination of these Terms and Conditions.

19. USE OF PRODUCTS. Buyer shall indemnify Seller against all claims, losses, damage, or injury arising out of or related to the use of the Products, whether sold separately or incorporated into any of Buyer's products or services.

20. GENERAL. If individual provisions of these Terms and Conditions are held by a court of competent jurisdiction to be valid, then such provisions shall be modified to the minimum extent necessary to render them valid, while to the fullest extent possible preserving the business and financial intent and impact of the original provisions, and the remaining provisions shall remain unaffected. Seller's failure to enforce any of the provisions hereof, or to exercise any right provided herein, shall in no way be construed as a waiver of such provision or right, nor in any way affect the validity of these terms and conditions or Seller's right to enforce any part of these terms and conditions at any time. These Terms and Conditions are governed by the laws of the Commonwealth of Pennsylvania without giving effect to conflict of laws rules and principles, and excludes application of the United Nation's Convention on Contracts for the International Sale of Goods. Buyer agrees that any dispute arising under these Terms and Conditions shall be resolved in the state or federal courts of Allegheny County, Pennsylvania, and Buyer hereby expressly consents to jurisdiction herein. Buyer agrees that Seller shall have the right to have any dispute between the parties arising out of or in connection with these Terms and Conditions be settled by arbitration utilizing the dispute resolution procedures of the American Arbitration Association (AAA) in Pittsburgh, Pennsylvania, by one (1) arbitrator appointed in accordance with said rules. Judgment on the award rendered by the arbitrator may be entered in any court with competent jurisdiction. Notwithstanding the foregoing, nothing in these Terms and Conditions shall limit either party's right to seek immediate injunctive or other equitable relief in any court of competent jurisdiction. Neither these Terms and Conditions nor any rights under these Terms and Conditions shall be assigned or otherwise transferred by Buyer (by operation of law or otherwise) without the prior written consent of Seller and any unauthorized transfer or assignment shall be void. These Terms and Conditions shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. These Terms and Conditions constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral.