

Systel, Inc.
Terms and Conditions of Sale

1. Applicability

- a. These terms and conditions of sale ("Terms") are the only terms which govern the sale of the goods ("Goods") by Systel ("Seller") to you, the Buyer ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- b. The accompanying quotation/invoice ("Sales Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery

- a. Buyer is responsible for all shipping charges and applicable costs. Title and risk of loss will pass to Buyer upon delivery of Goods to the designated carrier. Seller will deliver Goods within a reasonable time after the receipt of Buyer's purchase order ("Order"). Seller shall not be liable for any delays, or loss of damage in transit. A delayed delivery of any part of the Order does not entitle Buyer to cancel other deliveries. Seller may make, in its sole discretion, without liability or penalty, partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped, whether or not such shipment is in whole or partial fulfillment of the Order.
- b. If Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations:
 - i. risk of loss to the Goods shall pass to Buyer;
 - ii. the Goods shall be deemed to have been delivered; and
 - iii. Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- c. Seller makes no guarantees to delivery dates in respect of quotation and Seller will confirm expected delivery date upon acceptance of Buyer Purchase Order. Unless otherwise stated, delivery of Goods is Ex-Works (FCA/FOB shipping point).

3. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods to the carrier. As collateral security for the payment of the purchase price of

the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.

4. Inspection and Rejection of Nonconforming Goods
 - a. Buyer shall inspect the Goods within 15 working days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following:
 - i. product shipped is different than identified in Buyer's purchase order;
or
 - ii. product's label or packaging incorrectly identifies its contents.
 - b. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion
 - i. replace such Nonconforming Goods with conforming Goods, or
 - ii. credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located in Texas. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
 - c. Buyer acknowledges and agrees that the remedies set forth in subparagraph (b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under subparagraph (b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
5. Price. All prices quoted are in \$US dollars. Seller's quoted prices apply for thirty (30) days or as otherwise stated in the quotation. Seller may increase prices if costs increase or other circumstances beyond Seller's control arise. Prices are subject to change at any time. Prices do not include taxes, impositions, credit card fees, shipping charges, and any other charges, fees, duties, etc. imposed by any government authority. Buyer shall be responsible for all such charges, costs and taxes, excise or similar taxes or duties; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.
6. Payment Terms. Buyer shall pay all invoiced amounts due to Seller within thirty (30) days of Seller's invoice. On any past due invoice, Seller may charge interest from the

payment due date to the date of payment at the lesser rate of 1.5% per month or the highest permissible rate under applicable law, calculated daily and compounded monthly. In addition to all other remedies afforded to Seller hereunder, Seller shall be entitled to suspend the delivery of any Goods to Buyer if Buyer fails to pay any amounts when due and such failure continues for fifteen (15) days following written notice thereof. The amounts payable by Buyer to Seller under the order acknowledgment are paid in full, Seller shall have a lien on the Goods for the unpaid amounts. Buyer hereby grants to Seller a security interest in the Goods to secure payment of such amounts. Seller may require alternative finance terms (determined on a case by case basis) for payment of Goods including but not limited to pre-payment, scheduled milestone payments, partial or full payment prior to shipping, and letter of credit (LC).

7. Systel's Limited Warranty

- a. Unless otherwise stated, Seller warrants that upon delivery to the Buyer, the product sold thereunder shall be free of defects in materials and workmanship and that such product shall substantially conform to the specifications provided by Seller. This Warranty commences on the date of delivery to the Buyer unless another time for commencement has been agreed to in writing between Seller and Buyer prior to such delivery. Should the product be delivered through a third party (UPS, USPS, Federal Express, etc.), the warranty period shall commence on the date that such third party receives the product unless another time or commencement has been agreed to in writing between Seller and Buyer prior to such delivery. The duration of the Warranty shall be three (3) years from the date of delivery as set forth above.
- b. Seller will transfer to Buyer any Goods' warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. Seller warrants that all Goods will conform to manufacturer's specifications.
- c. This Warranty shall be effective only if Seller receives notice of such defects in materials and workmanship during the period of the Warranty stated above. After Seller receives such notice, Buyer shall obtain a Return Material Authorization (hereafter RMA) number. To obtain an RMA number, Buyer shall contact Systel, Inc. Customer Service Department, with the model number(s), serial number(s), and original purchase order number(s) of the product or products. Buyer shall include a brief description of the problem or failure mode experienced. Buyer shall mark the outside of the package containing the product or products, conspicuously, with the letters RMA and the number assigned by Systel, Inc. Any package returned without RMA and the RMA number clearly visible will be rejected at Seller's receiving dock. After Buyer has provided notice and obtained the appropriate RMA number, Buyer shall return the product, upon request, to Systel, Inc. 1655 Industrial Blvd, Sugar Land, Texas, 77478, not later than thirty (30) days after Seller's receipt of notice of the alleged problem or failure mode. Buyer shall prepay all transportation charges for return of the product(s) to Seller. Seller shall pay

for the cost of sending the product (s) back to Buyer. Transportation charges to Buyer shall be deemed Best Way and any other transportation charges shall be at the Buyer's cost. All costs of customs clearance, shipping, and any other related charges for transportation outside of the contiguous 48 United States shall be at the Buyer's expense. After Buyer's compliance, Seller shall, at Seller's option, repair or replace the product(s).

- d. Excluded from this Warranty are all problems or failures resulting from:
 - i. Improper or inadequate maintenance of the product by the Buyer.
 - ii. Unauthorized modification of the product by any means.
 - iii. Operation of the product outside its environmental specifications.
 - iv. Neglect, misuse, or abuse of the product.
 - v. Modification or integration with other components not covered by a Seller warranty when such integration increases the likelihood of problems, failures, or damage.
- e. This warranty is between Seller and Buyer only and does not extend to Buyer's customers or users of Buyer's products. In addition, and in the event that Buyer integrates Seller's product with components manufactured or supplied by any other company, this warrant shall only relate to defects in materials and workmanship of Seller's product and not to problems with or failures of Seller's product caused by other components not provided by Seller.
- f. Seller's rendering of technical advice and/or assistance or Seller's performance of service work in connection with Buyer's order of the product(s) shall not change or enhance this warranty in any way. Buyer's reliance on Seller's skill or judgment to select or furnish suitable goods shall be at Buyer's risk. Seller shall not be liable for any direct, indirect, special incidental, or consequential damages including, but not limited to, loss of profits and/or destruction of other property caused by any application of the product(s) and/or its integration with other components. Seller's liability shall be limited to the amount paid by the Buyer for the product(s).
- g. Notwithstanding the foregoing to the contrary, in the case of any third-party equipment or other goods not explicitly designed and/or manufactured by Seller, shall not be warranted by Seller under the terms of this Warranty. In such case, Buyer agrees to seek recourse solely from the manufacturer of said third-party equipment or other goods and not Seller; provided however Seller may warrant same on a case by case basis, but only to the extent set forth by Seller in a separate written instrument.
- h. **DISCLAIMER OF WARRANTY: SELLER SPECIFICALLY EXCLUDES ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

license, or other governmental approval, without first obtaining such license, approval or letter.

10. **Product Information.** Product information, including all information relating to specific export/import control classifications is obtained by Seller from its suppliers or other sources. Seller will provide such information on an "AS IS" or "AS NEEDED" basis. Seller makes no representation to the accuracy or completeness of Product Information and **DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND LIABILITIES UNDER ANY THEORY WITH RESPECT TO PRODUCT INFORMATION, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.** All Product Information is subject to change without prior notice.
11. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement, and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
12. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof.
13. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.
14. **Government Contracts.** If Buyer's Order is placed under a prime contract with the United States Government, Seller agrees to comply to only those FAR and DFARS contract provisions and regulations with which, pursuant to applicable federal law, it must comply with and of which the Buyer has, at the time of the Order, placed Seller on written notice of. In no event shall U.S. Government Cost Accounting Standards apply. Moreover, Seller will be considered a seller of Commercially Off-the-Shelf

items (COTS) as defined in FAR 2.101. All rights in technical data and software owned or licensed by Seller or the manufacturer are hereby reserved and deemed restricted or limited.

15. **Force Majeure.** The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller such as acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.
16. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
17. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
18. **Governing Law.** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Texas, without regard to the United Nations Convention on International Sales of Goods. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the County of Fort Bend, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
19. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.