

Terms and Conditions of Sale

All Alpha Group companies, as they may appear on the face hereof, (hereinafter "Seller") product sales are subject to the following terms and conditions of sale. Any order which contains terms and conditions in addition to or inconsistent with the following shall not be binding upon Seller unless acceptance thereof is made in writing by and signed by an officer of the company.

- 1. Formation of Contract.** The buyer or customer ("Buyer") will be deemed to have irrevocably accepted these Terms of Sale upon Buyer's acceptance of any of the goods (the "Goods"), without regard to whether Buyer makes or may make any inspection with respect to such Goods. Any term of Buyer's order in any communication from Buyer, which is in any way inconsistent with or in addition to these Terms of Sale, will not be applicable to or binding upon Seller. If Buyer objects to any of these Terms of Sale such objections must be in writing and received by Seller prior to commencement of performance by Seller, and will not be binding on Seller unless agreed to in writing by Sellers authorized representative.
- 2. Prices.** Invoiced prices will be based upon Seller's prices in effect at the time an order is received by Seller. Seller may, at Sellers discretion, quote pricing in either US Dollars or in Euros. Prices shall be Ex Works, (as the term "EX WORKS" is defined by INCOTERMS, 2000 ed.) unless otherwise specified. Prices do not include any state, federal or use taxes, duties, fees or charges now or hereafter enacted, applicable to the Goods or to this transaction, all of which taxes and duties will be Buyer's responsibility.
- 3. Payment Terms.** If Seller extends credit to Buyer, terms of payment shall be net 30 days after date of invoice. After the due date, the lesser of 1½% of the unpaid price (annual rate of 18%) or the maximum late payment penalty charge or interest rate permitted by law will be added for each month or part thereof that payment is delayed. Seller has the right at any time to change the amount of credit or terms of payment or to withdraw credit and to require partial or full payment in advance as a condition of making further shipments. Goods held thereafter by Seller or by Seller's carrier for Buyer will be at Buyer's sole risk and expense. Buyer will pay all of Seller's costs and expenses (including reasonable attorney's fees) to enforce or preserve Seller's rights hereunder, whether or not an action is commenced. Seller reserves the right to invoice for partial shipments.
- 4. Risk of Loss and Delivery Title.** Liability for loss or damage passes to Buyer when Seller delivers the Goods on dock. Seller has the right to deliver in installments. Shipping and delivery dates are approximate only. Seller will not be liable for any loss or expense (consequential, incidental or otherwise) incurred by Buyer if Seller fails to meet such dates for any reason, including, but not limited to, the contingencies stated in paragraph 8. Delays in delivery, conformity or late delivery of an installment will not relieve Buyer of its obligations hereunder with respect to any other installments, each installment being deemed to be a separate contract. Seller reserves a purchase money security interest in the Goods sold and its proceeds in the amount of the purchase price. In the event of default by Buyer in any of its obligations to Seller, Seller will have the right to repossess the Goods sold. Buyer agrees that a copy of the invoice utilized in connection with the purchase of Goods may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage to perfect Seller's security interest in the Goods sold. Buyer hereby authorizes Seller to execute and file, at any time, one or more financing statements with respect to such items, signed only by the Seller, who is hereby appointed Buyer's attorney-in-fact for such limited purpose.
- 5. Shipment.** In the absence of specific shipping instructions, Seller will ship the Goods by the method it deems most advantageous, EX WORKS, as specified in paragraph 2. Transportation charges will be collected on delivery or, if prepaid, will be subsequently invoiced to Buyer. Buyer is obligated to obtain insurance against damage to the Goods being shipped. Unless otherwise specified, the Goods will be shipped in standard commercial packaging. When special or export packaging is requested or, in the opinion of Seller, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced. Shipping costs may include pallet fees and such other packaging costs deemed necessary by Seller. Claims or tracers upon carrier must be filed by Buyer, and Seller will assist in tracing shipments upon request. Seller reserves the right to ship two days prior to the Order Verified Due Date without notification to The Buyer.
- 6. Inspection and Acceptance.** Goods will be conclusively deemed accepted by Buyer unless a notice of rejection has been sent by Buyer within a 15 day period. Rejected Goods will be placed by Buyer in safe storage for inspection by Seller.
- 7. Change Orders.** Buyer may not cancel any orders, revise quantity, deviate from specifications or shipping schedules, or return non-defective Goods for credit unless and only by mutual agreement as to recovery by Seller for applicable charges which will take into account expenses incurred and/or commitments made by the Seller in faithful execution of any orders. Seller's Return and Cancellation Policy provides the process and applicable fees for Seller authorized returns and order cancellations. "Holds" for purchase order releases must be submitted in writing at least 30 days prior to release date. Special, custom, or otherwise non-standard orders are non-cancelable and non-returnable. Batteries are non-returnable. Seller reserves the right to refuse acceptance of any Goods returned for credit or a refund, except as is otherwise specified herein.
- 8. Contingencies/Force Majeure.** Seller will not be liable for any delay in performance or for nonperformance in whole or in part caused by the occurrences of any contingency beyond the control either of Seller or Seller's suppliers, including but not limited to, war (whether an actual declaration is made or not), sabotage, terrorism, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of government or any government of any agency or subdivision thereof affecting the terms of this contract of other wise, judicial action, labor dispute, accident, fire, explosion, flood, storm or other Act of God, shortage of labor, fuel, raw materials, tools, dies or equipment, or technical or yield failure.
- 9. Substitutions and Modification of Goods.** Seller has the right to modify the specifications of Goods designed by Seller and substitute substantially equivalent Goods manufactured to such modified specifications. Seller reserves the right to discontinue particular models and to make modifications in design and/or function at any time, without notice and without incurring obligations to modify previously purchased Goods.
- 10. Warranties.** Seller warrants the Goods to be free of manufacturing defects in material and workmanship, as fully described on the warranty statement, and fully incorporated herein by this reference. Seller warrants good title to any hardware furnished under this contract. Seller warrants that services will be performed in a good and workmanlike manner. Seller also warrants that during the warranty period, each Item Seller delivers (other than separately licensed software and services) will be free from material defects in workmanship and materials and under ordinary use, conform in all material respects to its published specifications current at the time the Item was shipped.
- 11. Limitation of Liability.** EXCEPT FOR CLAIMS FOR PERSONAL INJURY CAUSED BY ITEMS FURNISHED HEREUNDER, SELLER SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON OR ENTITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS TRANSACTION OR ANY ACTS OR OMISSIONS ASSOCIATED THEREWITH OR RELATING TO THE SALE OR USE OF ANY ITEMS OR SERVICES FURNISHED, WHETHER SUCH CLAIM IS BASED ON BREACH OF WARRANTY, CONTRACT, TORT OR OTHER LEGAL THEORY AND REGARDLESS OF THE CAUSES OF SUCH LOSS OR DAMAGES OR WHETHER ANY OTHER REMEDY PROVIDED HEREIN FAILS. IN NO EVENT SHALL OUR TOTAL LIABILITY UNDER THIS CONTRACT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR ITEMS PURCHASED HEREUNDER.
- 12. Termination.** This contract may not be terminated by Buyer without Seller's prior written consent. If Seller consents to such termination, Buyer will be liable for termination charges including, without limitation, a price adjustment based on the quantity of Goods actually delivered and all costs, direct, incurred and committed for this contract together with reasonable allowance for prorated expenses and anticipated profits.
- 13. Seller's Right to Cancel.** Seller has the right to cancel this contract if (i) Buyer breaches any of its obligations hereunder, or (ii) in Seller's sole judgment, Buyer's financial condition does not justify the terms of payment applicable from time to time and Buyer will not immediately comply with any modification of payment terms required by Seller in accordance with Section 3. If Seller exercises such right to cancel, Buyer will be liable for the charges and costs referred to in Section 3 in addition to any other remedies Seller may have hereunder or at law.
- 14. Waiver.** In the event of any default or breach by Buyer, Seller has the right to refuse to make further shipments. Seller's failure to enforce at any time or for any period of time any of the provisions of this contract will not constitute a waiver of such provisions or of the right of Seller to enforce each and every provision.
- 15. Governing Law.** The validity, construction and performance of this contract and the transactions to which it relates will be governed by the laws of the Province of British Columbia, Canada without regard to conflict of law principles. Subject to Section 20(b) all actions, claims of legal proceedings in any way pertaining to this contract, or such transactions will be commenced and maintained in the courts of British Columbia, Canada, and the parties hereto each agree to submit themselves to the jurisdiction of such court.
- 16. Government Contracts.** If the Goods to be furnished hereunder are to be used in the performance of a United States Government contract or subcontract, Buyer will notify Seller in writing at the time of the order, and will provide Seller with a United States Government contract number, as well as a copy of the applicable United States Government Contract. If Buyer's order is accepted by Seller, those clauses of the applicable United States Government procurement regulation which are mandatorily required by federal statute to be included in United States Government subcontracts will be deemed incorporated herein by reference and will control if inconsistent with any provisions of this contract.
- 17. Assignment.** This contract is not assignable by either party, except that the Seller has the right to assign this contract to an affiliate or to the purchaser of all or substantially all of its assets, and Seller has the right to assign accounts receivable or the proceeds of this contract. Subject to the foregoing, this contract is binding upon and inures to the benefit of the parties hereto and their permitted successors and assigns. Nothing in this contract will inure to the benefit of or be deemed to give any rights to any third party, whether by operation or law or otherwise.
- 18. Severability.** If any of these Terms of Sale is declared to be invalid by a court, agency, commission or other tribunal or entity having jurisdiction, the applications of such provisions to parties or circumstances other than those as to which it is held invalid or unenforceable will not be effected and each term not so declared invalid or unenforceable will be valid and will be enforced to the fullest extent permitted by law and the rights and obligations of the parties will be construed and enforced as though a valid commercially reasonable term consistent with the undertakings of the parties under the order has been substituted in place of the invalid provision.
- 19. Set-Off.** Buyer may not set-off any amount owing from Seller to Buyer against any amount payable by Buyer to Seller whether or not related to this contract.
- 20. Provisions Applicable to International Orders.** The following additional terms and conditions shall apply to orders from parties domiciled outside of the United States of America, or which are to be ultimately shipped (either by Seller or Buyer) to destinations outside of the United States of America: (a) **Compliance with Laws.** At Seller's request, Buyer shall identify in writing the country or countries into which the Goods will be shipped or in which they will be installed or used (the "Territory"). Buyer shall not ship, install or use the Goods anywhere other than in the Territory, and shall be solely responsible for compliance with any applicable laws and regulations of the Territory and/or the United States regarding the export, import, sale or use of the Goods, or the labeling thereof, or which are in any way applicable to Buyer's responsibilities or rights under this Agreement, including, without limitation, the United States Foreign Corrupt Practices Act (which prohibits certain payments to government officials or their agents or instruments). Without limiting the generality of the foregoing, Buyer shall be solely responsible for (i) obtaining and maintaining, and for complying with, any required registrations, permits, licenses, and/or approvals (collectively, the "Approvals") which may be required or necessary to install, market, sell, promote or use the Goods in the Territory, or to conduct Buyer's business in the Territory; and (ii) if Buyer sells or resells the Goods in the Territory, Buyer shall ensure that any sales and promotional literature used, whether produced by Seller or another party, shall, in all respects, comply with all applicable laws and regulations of the Territory. (b) **Arbitration.** Any suit, dispute, claim, demand, controversy or cause of action of every kind and nature whatsoever, known or unknown, fixed or contingent, that Seller or Buyer may now have or at any time in the future claim to have based in whole or in part, or arising from or that in any way is related to the negotiations, execution, interpretation or enforcement of this contract (collectively, the "Disputes") shall be completely and finally settled by submission of any such Disputes to arbitration under the rules of the International Chamber of Commerce then in effect. If the parties are unable to agree on a single arbitrator, then such binding arbitration shall be conducted before a panel of three (3) arbitrators that shall be comprised of one (1) arbitrator designated by each party and a third arbitrator designated by the two (2) arbitrators selected by the parties. Unless the parties agree otherwise, the arbitration proceedings shall take place in Vancouver, British Columbia, Canada, and the arbitrator(s) shall apply the law of the State of Washington, USA, to all issues in dispute. All arbitration proceedings shall be conducted in English. The findings of the arbitrator(s) shall be final and binding on the parties. Judgment on such award may be entered in any court of appropriate jurisdiction, or application may be made to that court for a judicial acceptance of the award and an order of enforcement, as the party seeking to enforce that award may elect. (c) **Exclusion.** The UN Convention on Contracts for the Sale of International Goods is hereby excluded from application to this Agreement. (d) **Language.** The language of this Agreement is expressly stipulated to be the English language, and any amendments, modifications, notices or other communications provided in connection with this Agreement shall be in English. (e) **Payments.** Any and all payments required under this Agreement shall be made in either US dollars or in Euros at the sole direction and discretion of Seller. Notwithstanding Section 3, at Seller's option, payment for Goods ordered by Buyer from Seller, or for any other amounts owing to Seller, shall be made by means of either (i) a wire transfer to the Seller's bank account, or (ii) by an irrevocable letter credit drawn on or confirmed by a United States bank acceptable to Seller, payable upon presentation of shipping documents. Seller shall not be required to make any shipment until payment is made consistent with the terms hereof. (f) **Import and Export Requirements.** Buyer shall, at its own expense, obtain all import and export licenses and permits, pay customs charges and duty fees, and take all other actions required to accomplish the export and import of Goods purchased by Buyer. Buyer warrants that it will comply in all respects with the export and re-export restrictions set forth in the export license for every product shipped to Buyer, and with all export regulations of the United States or any agency thereof. Buyer will not ship or allow the Goods to be shipped into a "prohibited country," or to a "prohibited party," as identified from time to time in such export regulations.