

## TERMS AND CONDITIONS OF SALE

The terms and conditions as set forth herein shall constitute the entire agreement between TEK Microsystems, Inc. ("Seller") and Buyer regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document or other communication. This Agreement shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of the Agreement by its express terms. Buyer hereby acknowledges he has not entered into this Agreement in reliance upon any warranty or representations by any person or entity except for the warranties or representations specifically set forth herein.

- 1. PRICE AND TAXES.** Prices are for product and or services only and are exclusive of all taxes, fees, shipping charges, freight, duties, and other charges or fees (such as fees for special packaging and labeling of products), permits certificates, customs declarations and registration, now in existence or enacted in the future (collectively "Additional Fees"). Any such Additional Fees of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such Additional Fees, at the time of sale or thereafter, the Buyer shall reimburse Seller.
- 2. DELIVERY AND TITLE.** Unless otherwise specified by Seller in writing all deliveries are FCA Seller's Premises (INCOTERMS 2010). Title and risk of loss pass to Buyer upon delivery of product(s) to the carrier at origin. In no event will seller be liable for any indirect, special, incidental or consequential damages resulting from any failure to meet any delivery schedule or for costs of procurement of substitute goods. When Buyer has not provided specific shipping instructions, Seller will ship by the method it deems most advantageous. Buyer is obligated to obtain insurance on any shipment. Seller reserves the right to make partial deliveries and Buyer will accept delivery and pay for product(s) delivered. A delayed delivery of any part of an order does not entitle Buyer to cancel any other deliveries.
- 3. ACCEPTANCE.** Products are deemed accepted by Buyer unless Buyer notifies Seller in writing within five (5) days of delivery of product shortages, damage or defect. No returns may be made for any reason without a Return Materials Authorization ("RMA") issued by Seller. RMAs will not be granted for damage, shortage, or other discrepancy created by Buyer, the carrier/freight provider or any other third party.
- 4. SECURITY INTEREST.** Seller hereby reserves a purchase money security interest in equipment sold and the proceeds thereof, in the amount of its sales price. Default by Buyer under this Agreement to Seller will result in Seller's right to repossess the products sold hereunder and without liability to Buyer. These security interests will be satisfied by payment in full. On request of Seller, Buyer will execute financing statements and other instruments Seller shall desire to protect its security interest.
- 5. TERMS AND METHOD OF PAYMENT.** With approved credit, terms are net thirty (30) days from date of invoice or as otherwise approved on Seller's quote. Buyer will be charged 1.5% per Month (but not more than is permitted under applicable law) on overdue accounts.
- 6. DATA AND PROPRIETARY RIGHTS IN DATA.** Buyer is notified that portions of the data supplied by Seller are proprietary to Seller. Seller shall retain for itself all proprietary rights in and to all designs, engineering details, intellectual property, and other data pertaining to any product sold except where rights are assigned under written agreement by a corporate officer of Seller. Products including third party software or other intellectual property are subject to any applicable rights of those third parties, such as patents, copyrights and/or user license, and Buyer will comply with such rights.
- 7. LIMITED WARRANTY.** Seller warrants that the Seller manufactured products sold hereunder will conform to applicable specifications and be free from defects in material and workmanship for a period of one (1) year from the initial date Seller delivers the products to Buyer. Seller's liability is limited to replacing or repairing, or granting a credit for the purchase price of (at Seller's sole discretion and option) any defective products which are returned to Seller's designated repair facility at Buyer's expense. Software is warranted, if at all, only to the extent provided in the applicable software license. Such repair or replacement shall be the Buyer's sole remedy with respect to a breach of the above warranty. In no case are products to be returned without first obtaining an RMA from Seller. Seller disclaims all liability with respect to data in returned products. The warranty does not cover malfunctions, failures or defects resulting from abuse, misuse, accident, alteration, neglect, improper maintenance, or unauthorized or improper repair or installation. EXCEPT AS HEREIN PROVIDED SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- 8. LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY LAW, SELLER'S MAXIMUM LIABILITY UNDER ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT, SHALL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCT AT ISSUE. IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCURING SUBSTITUTE GOODS, LOSS OF PROFITS OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR RELIANCE DAMAGES, LOSSES OR EXPENSES HOWEVER CAUSED, AND WHETHER BASED ON CONTRACT, TORT, EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR EXPENSES. TO THE EXTENT THE PRECEDING LIMITATION OF LIABILITY IS DEEMED INVALID UNDER APPLICABLE LAW, SELLER'S TOTAL LIABILITY IN ANY EVENT WILL NOT EXCEED \$50,000 OR THE EQUIVALENT THEREOF.
- 9. SUBSTITUTIONS AND MODIFICATIONS.** Seller shall have right to make substitutions and modifications in the specifications of products sold by Seller provided that they will not materially affect overall product performance.
- 10. CANCELLATIONS & RESCHEDULING.** No order or Buyer obligation may be cancelled, rescheduled, reconfigured or assigned without Seller's prior written authorization and, in such event, Buyer will be liable to Seller for any additional costs and expenses incurred by Seller. Prices are subject to change by Seller upon Buyer rescheduling or reconfiguration of orders. In the event of cancellation, Buyer will have no rights in partially completed goods. Custom products and end-of-life last time buys are non-cancelable.
- 11. PATENTS AND COPYRIGHT INDEMNITY.** Seller will defend at its expense any action brought against Buyer or its customers based upon the claim that the product directly infringes any validly issued United States or European Union patent or copyright issued as the date of this Agreement and Seller agrees to pay all damages and costs finally awarded against Buyer or its customers attributable to such claim; provided Seller has sole control of any such action and settlement negotiations and provided Buyer notifies Seller promptly in writing of such claim, and gives Seller authority, information and assistance, at Seller's expense, necessary to settle or defend such claim. Seller assumes no liability hereunder for infringement claims arising out of or related to: (i) the combination of the product with any products not supplied by Seller; (ii) designs, instructions, specifications, or intellectual property supplied or specified by Buyer; (iii) modification of the products by any party other than Seller, and/or (iv) Buyer's failure to substitute any non-infringing replacement product in accordance with Seller's instructions. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.
- 12. HIGH RISK ACTIVITIES.** Buyer acknowledges that the hardware and/or software products may contain errors and are not designed or intended for use in on-line control equipment in hazardous environments requiring fail-safe performance, including without limitation, the operation of Nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines or weapons systems ("high risk activities") in which the failure of the hardware and/or software products could lead to injury to persons or loss of life or catastrophic property damage. Accordingly, Seller disclaims any and all liability, and Buyer and any customers of Buyer use or sell such Products for use in such applications at their own risk, and Buyer agrees to fully indemnify, defend and hold harmless Seller from and against any and all claims, demands, actions, litigation, proceedings and the like arising out of or related to any such use or sale.
- 13. EXPORT/IMPORT.** Certain products sold by Seller and other related technology and documentation are subject to export control laws, regulations and orders of the United States, European Union and/or other countries ("Export Laws"). Buyer shall comply with such Export Laws and obtain any license, permit or authorization required to transfer, sell, export, re-export or import the products and related technology and documentation. Seller shall have no responsibility for delayed delivery or non-delivery resulting from (1) any governmental action under U.S. or other applicable law suspending or revoking a necessary export license or authorization, or (2) any failure by buyer to furnish reasonable assurance, upon request, of its compliance with applicable export requirements.
- 14. FORCE MAJEURE.** Neither party hereto shall be in default or liable for any delay or failure to comply with this Agreement if such delay or failure is due to causes beyond its reasonable control, provided that such party notifies the other party in writing promptly, within fifteen (15) days after discovery of the circumstances.
- 15. GENERAL.**
  - (a) This Agreement shall be construed in accordance with the law of The Commonwealth of Massachusetts without giving effect to any choice of law provisions thereof.
  - (b) If Buyer becomes bankrupt, insolvent, makes an assignment for the benefit of creditors, or commences to be wound up or suffers a receiver to be appointed, Seller shall be at liberty, by notice in writing, to cancel this Agreement without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which has accrued or shall accrue thereafter to Seller.
  - (c) Buyer is prohibited from reselling the Sellers product or software without the written permission of the Seller.
  - (d) The failure by Seller to enforce at any time the provisions of this Agreement, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or options, nor in any way to affect the validity of this Agreement or any part thereof, or the right of Seller thereafter to enforce each and every such provision.
  - (e) This Agreement can only be modified in writing and signed by authorized representatives of both Seller and Buyer.
  - (f) If a dispute or controversy arises regarding this Agreement, the parties will attempt in good faith to settle the dispute by mediation.
  - (g) Seller and Buyer are independent contractors and agree this Agreement does not establish a joint venture, agency relationship or partnership.
  - (h) Seller and Buyer will comply with applicable laws and regulations.