

BORDER STATES INDUSTRIES, INC. TERMS AND CONDITIONS OF SALE

1. GENERAL

These standard terms and conditions of sale (along with any directly associated Border States Industries, Inc. and related entities and affiliates written specification or quotation) exclusively will govern the sale by Border States Industries, Inc. ("Seller") of all goods and services to Buyer (including, without limitation, hardware, firmware and software products, training, programming, maintenance, engineering, parts and repair services, collectively the "Products"). Buyer's order or statement of intent to purchase Products, or any direction to proceed with procurement or shipment of Products, or any payment for Products constitute Buyer's specific and express agreement to these terms and conditions. Seller will not, under any circumstances, agree or be bound by any provisions, conditions, or agreements which are inconsistent with, contrary to, additional to, in lieu of, or which modify in any manner, the following terms and conditions unless an authorized officer of Seller agrees to such provisions, conditions, or agreements in writing.

2. PAYMENT TERMS

Buyer agrees to pay for all Products by the due date according to the terms of sale stated on each invoice or otherwise agreed to in writing with Seller. Payment terms shall be Net 30, unless other terms are stated. All accounts are due and payable at the address shown on Seller's invoice. Credit availability shall be at the sole discretion of Seller and may be terminated or changed at any time by Seller. Seller specifically reserves the right to require payment in cash for any shipment or delivery should Seller so determine in its sole discretion. No payment by offset is permitted unless approved by Seller. Buyer agrees to pay late payment fees on all undisputed past due accounts at a rate of 1 ½% each month on the past due balance, but not to exceed the highest rate lawfully allowed. Acceptance of any payment from Buyer without the accrued late fee included shall not be deemed to be a waiver of such accrued late fees. Charge backs will not be honored without prior written authorization. Any lien rights or legal remedies for non-payment asserted by Seller shall be governed by the laws of the state where the materials are delivered.

3. DELIVERY

- 3.1. All sales are made F.O.B. point of shipment, unless otherwise mutually agreed upon by Buyer and Seller. Title and risk of loss shall pass to Buyer at point of shipment. Each shipment or delivery shall be considered a separate and independent transaction.
- 3.2. Special routing or special transportation methods requested by Buyer may increase transportation costs. Such increases will be billed to Buyer. Items quoted with transportation charges prepaid and allowed, are based on shipment that falls within the manufacturer's transportation allowance policy, usually one shipment. Any change in quantities or destination, or special release, may cause a price increase to Buyer.
- 3.3. Acknowledged shipping dates are approximate only and based, in part, on prompt receipt of all necessary information from Buyer. Delivery dates are not guaranteed and Seller shall not be liable to Buyer or the ultimate user for any claims arising from delay in shipment or delivery, whether or not resulting from causes beyond Seller's control, including, without limitation, fire, labor difficulties or delays in Seller's usual sources of supply. Shipping dates are subject to delays resulting from preference ratings or priority shipments ordered or requested by the United States government or any department, commission or agent thereof, and Seller shall not be liable for any such delays.
- 3.4. All claims with regard to errors or defects in shipment must be made in writing within five (5) days of delivery or such claim will be barred. Claims for breakage, damage, or loss in transit must be made to the transportation company by the consignee.

4. WARRANTY

Seller warrants good title to the Products. Seller, being solely a dealer-distributor and not a manufacturer, gives no additional warranties whatsoever and expressly DISCLAIMS ANY WARRANTY BY IT, EXPRESS OR IMPLIED, STATUTORY, BY OPERATION OF LAW OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE and the only additional warranties on any item purchased from Seller is the express warranty, if any, given by the manufacturer of the item. Seller warrants that all services will be performed in a professional manner consistent with generally accepted industry standards.

5. INDEMNIFICATION

Buyer agrees to defend, indemnify and hold Seller and its officers, directors, shareholders, agents, servants, employees and insurers harmless from any and all liabilities, claims and expenses that arise from this agreement, including without limitation, reasonable attorney's fees, expenses, costs, judgments, settlements, contract losses, damages, injuries (including, but not limited to, liquidated damages) except to the extent the liabilities, claims or expenses arise from Seller's negligence or willful misconduct. If Products are used in an application where failure of a single component could cause substantial harm to persons or property, Buyer agrees to indemnify and hold Seller harmless from liability for such harm whether as a result of breach of contract, warranty, tort (including negligence), or other grounds.

Seller agrees to defend, indemnify and hold Buyer and its officers, directors, shareholders, agents, servants, employees and insurers harmless from any and all liabilities, claims and expenses that arise from Seller's negligence or willful misconduct. Buyer agrees to notify Seller of any potential claims, and will assist Seller in the defense of those claims.

6. LIMIT OF LIABILITY

In no event will Seller be liable for liquidated, incidental, indirect, or consequential damages of any kind. Seller's maximum cumulative liability relative to all other claims and liabilities, including that with respect to direct damages and obligations under any indemnity, whether or not insured, will not exceed the cost of the Products giving rise to the claim or liability. Any action against Seller must be brought within twelve (12) months after the cause of action accrues. The disclaimers and limitations of liability set forth in these standard terms and conditions shall apply regardless of any other contrary provision set forth and regardless of the form of action, whether in contract, tort, or otherwise. Each provision in these standard terms and conditions which provides for a limitation of liability, disclaimer of warranty or condition or exclusion of damages is severable and independent of any other provision and is to be enforced as such. Seller's sole obligation to Buyer is to use due diligence in an effort to cause the manufacturer of any item which is defective to repair or replace such item.

7. PRICES

Prices and other information shown in any Seller publication (including product catalogs, brochures and web sites) are subject to change without notice and confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. Buyer will pay or reimburse Seller for all sales, use, excise or similar taxes. Products comprised of time and material services will be provided in accordance with Seller's published service rates, including applicable overtime and travel expenses in effect as of the date such services are provided, unless otherwise confirmed by Seller's written quotation or order acknowledgement. Billable service time includes travel time to and from the job site and all time Seller's representatives are available for work and waiting (whether on or off the job site) to perform the services. Due to the rising cost of rare earth phosphors, all fluorescent lamp pricing will be subject to the price in effect at time of shipment. Unless otherwise noted, prices do not include any present or future sales, use, excise, value added, or similar tax. Where applicable, all such taxes shall be paid by the Buyer.

8. CHANGES

Buyer requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior approval and adjustments in price, scheduling and other affected terms and conditions. Seller reserves the right to reject any change.

9. RETURNS

All returns of Products will be subject to prior Seller approval and will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return. Shipping containers must be clearly marked in accordance with Seller's instructions and shipped freight prepaid by Buyer. The invoice number must be furnished for all materials returned to ensure proper credit. Seasonal items may be subject to higher restocking charges.

10. ORDER CANCELLATION

An order may be canceled by Buyer prior to the shipment only by written notice and upon payment to Seller of reasonable cancellation and restocking charges, including reimbursement for direct costs, plus allowances for disruption. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products. No termination for cause by Buyer will be effective unless and until Seller has failed to correct such alleged cause within forty-five (45) days after receipt of the Buyer's written notice specifying such cause.

11. FORCE MAJEURE

Seller shall not be liable for any loss, damage, or delay arising out of its failure to perform hereunder due to causes beyond its reasonable control, including, without limitation, acts of God or the Buyer, acts of civil or military authority, terrorist threats or attacks, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, or transportation embargoes. In the event of any such delay, Seller's performance date(s) will be extended for that length of time as may be reasonably necessary to compensate for the delay.

12. CERTIFICATION OF COMPLIANCE

It is the policy of our company to provide equal opportunity to all employees and applicants and to prohibit any discrimination because of race, color, religion, sex, national origin, age, marital status, disability or being a protected veteran. Employees will be treated on the basis of their job-related qualifications, ability and performance. It is also our policy that sexual harassment or any other kind of harassment will not be tolerated. The foundation of these policies is Seller's commitment to treat everyone fairly and equally and to have a bias-free work environment.

Any statement as to product country of origin, Export Control Classification Number, or compliance with applicable law (including, without limitation, that Products are lead-free or RoHS/REACH compliant or that Products comply with Buy American/Buy America) is as provided to Seller by its suppliers, and Seller does not warrant its accuracy and will not be liable for any error with regard to same. Buyer uses and re-uses such information at its own risk.

13. MISCELLANEOUS

- 13.1. Buyer agrees that in the event legal action is necessary to enforce the terms and conditions set forth herein, Buyer shall pay all costs incurred by Seller including, without limitation, attorney's fees and costs of experts.
- 13.2. All rights and remedies of Seller hereunder are in addition to Seller's other rights and remedies and are cumulative and not alternative.
- 13.3. The validity, performance, construction, and effect of these terms and conditions shall be governed by North Dakota law and any action based on a sale by Seller to Buyer shall be brought either in a State Court or a United States District Court located in Cass County, North Dakota. Buyer hereby waives contesting venue in agreeing and consenting to venue in Cass County, North Dakota, and specifically and expressly agrees to jurisdiction of said Courts. Each party knowingly, voluntarily, irrevocably, and unconditionally waives any and all right to trial by jury in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.
- 13.4. Lien Rights – governed by the state law where the project is located.
- 13.5. Buyer agrees that it has selected the Products based upon its own judgment and disclaims any reliance upon statements or representations made by Seller. Any statement or advice (including but not limited to advice regarding the quantity of goods necessary for a particular job, or the suitability of a particular product for a particular use) is provided solely as a courtesy to Buyer and is not guaranteed. No such statement or advice shall subject Seller to any liability whether based on contract, warranty, tort (including negligence), or other grounds.