



CONDITIONS OF SALE

1. GENERAL TERMS AND CONDITIONS

1. This sale is subject to these terms and conditions to the exclusion of all other terms and conditions including those contained in any customer document or form. Any variations in these Terms and Conditions which add to, vary from, or conflict with the terms herein are hereby rejected and shall not be binding unless agreed to in writing signed by an authorized representative of Hartwell Corporation.

1.1 No Waiver of any breach of any term, condition or obligation thereof shall be deemed a waiver of similar terms in the future, nor shall the waiver of any breach be deemed a waiver of subsequent breaches of the same or other nature.

1.2 In the event of conflict or inconsistency between the conditions of Customer's purchase order, other document or form and these terms and conditions of sale, these terms and conditions of sale shall govern.

2. CANCELLATION

2.1 This sale is not subject to cancellation, change, reduction in amount, or suspension or deferment of deliveries, except with the written consent of Hartwell Corporation and upon terms which indemnify Hartwell Corporation against loss.

2.2 A 100% Cancellation charge will apply for orders cancelled whereby parts are due for shipment within 120 business days (working days (Mon.-Fri.)) of cancellation date.

2.3 A request for changes in delivery schedule and/or quantity ordered within 120 business days of the original scheduled delivery date requires written approval of Hartwell Corporation. Such changes may be subject to equitable price adjustment.

3. CREDIT

3.1 In case buyer shall fail to make payments on this or any other contract between Buyer and Seller in accordance with Seller's Terms, in addition to any other remedies available to Seller at law or in equity, the Seller, at Seller's sole option and without any recourse for Buyer, may defer further shipments until such payments are made, or cancel unshipped balance.

4. DELIVERY

4.1 Delivery dates are quoted in good faith on a best effort basis but are not guaranteed. Seller does not assume any risk or liability for any loss (including loss of revenue or loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery for any reason including, but not limited to, any delay or non-fulfillment of contract due to acts of God, war, strike, breakdown, fires, governmental order or other causes beyond the Seller's control nor will any delay entitle the Buyer to terminate or rescind the contract or delay any of Buyer's obligations arising prior to such delay.

5. INTELLECTUAL PROPERTY

5.1 Any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) in the Products or in the tools, designs, drawings, or production or design data owned or created by the Seller in the course of the performance of the contract or otherwise used in the manufacture, maintenance or repair of the Products shall remain the Seller's property unless otherwise expressly agreed in writing by the Seller. The Seller grants, on full payment for the Products the non-exclusive right for the Buyer and bona fide purchasers from the Buyer to use, for the operation of the Products for their intended purpose only, (a) any software supplied with, or embedded in, the Products, and (b) technical manuals and instructions relating to the operation and maintenance of the Products. The Buyer hereby grants to Seller a non-assignable non-exclusive, royalty-free license to use any intellectual property rights (including, without limitation, patents, designs, trademarks, service marks and copyrights and any applications for any of the preceding) owned or controlled by the Buyer to the extent necessary for the Seller to supply the Products. Except as expressly stated herein, nothing in the contract shall be deemed to have given the Buyer a

license or any other right to use any of the intellectual property rights of the Seller unless otherwise expressly agreed in writing by the Seller.

5.2 Restrictions on Use of Hartwell Intellectual Property and Proprietary Information

(a) Notwithstanding any other provision herein, Buyer may not use Hartwell's Proprietary Information directly or indirectly to compete with Hartwell or in any manner to obtain a competitive advantage over Hartwell; and

(b) Buyer may not sell, reverse engineer or copy any of the Hartwell product or parts, or assist any third party in the reverse engineering or copying of any of the Hartwell product or parts, to make a competitive product or parts.

6. ERRORS AND OMISSIONS

6.1 Seller reserves the right to correct clerical errors and omissions without incurring any liability.

7. GOVERNMENT REGULATIONS

7.1 Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States Government which may prevent or interfere with fulfillment of this order.

7.2 Each party agrees to comply with all applicable governmental regulations as they relate to the import, export and re-export of information and/or products. Without limiting the foregoing, the parties shall not disclose or deliver any information or products provided hereunder in any manner contrary to any applicable export laws and regulations.

7.3 The Seller shall not be liable in any manner for delays or non-delivery arising from or related to refusals by governmental authorities or other authorities to grant licenses or approvals, nor for the suspension or revocation thereof, or for changes in export classification of the information and/or products. If requested by Seller, Buyer shall deliver any information, including end-user information, necessary for export licenses or other approvals to be granted.

8. PATENT INDEMNIFICATION

8.1 With respect to all products or parts thereof furnished or sold by Seller to Buyer, except items manufactured pursuant to designs furnished by the Buyer, Seller shall save Buyer, its agents, successors and assigns harmless from all loss, damage and liability incurred on the count of any infringement or any alleged infringement of a Patent, Copy right, or Trademark or misappropriation of a trade secret or other violation of an Intellectual Property Right of a third party, arising out of the manufacture, sale or use thereof by Seller, Buyer, Buyer's Agents, Customers, or users of its products and Seller shall at its own expense defend all claims, suits and actions against Buyer, its agents, customers, or users of its products in which such infringement or other violation of an Intellectual Property Right of any third party is alleged, provided Seller is notified of such claims, suits, and actions within ten (10) days after receipt by Buyer of notice or action for infringement except in the case of intellectual property infringement where the claim arises as a result of Buyer's modification to product, or Buyers' combination of Seller's otherwise non-infringing product with another product, and Buyer agrees to hereby defend and hold Seller and Seller's suppliers harmless to the same degree and extent recited in Seller's indemnity to Buyer here above. In addition, this indemnification does not apply to Articles manufactured to detailed designs developed and furnished by Buyer.

Seller has the right to 1) designate attorneys to represent Buyer, 2) settle any such charge or action, and 3) Buyer agrees to minimize damages of any such infringement.

9. REJECTIONS AND RETURNS

9.1 Claim for errors, deficiencies or imperfections will not be considered unless made within ninety (90) days after Buyer's receipt of material. Material found defective when in the hands of original purchaser, and at Seller's option will be replaced or credit will be allowed for the purchase price thereof upon its return. Seller shall not be liable for any claims for labor, installation, or any incidental, special, consequential or other damages or for loss of revenue, loss of use or loss of profit and material must not be returned except by permission of Seller. The remedies to Buyer hereunder are exclusive and in lieu of any remedy available at law or in equity.

9.2 Claims for shortage(s) must be made in writing to Seller within ten (10) days after receipt of goods. Seller accepts no responsibility for damage or losses occurring after delivery by Seller to any freight carrier. All claims in such regard will be made directly to freight carrier.

10. WARRANTY

10.1 We warrant that all products manufactured and sold by Seller are free from defects in material and workmanship. The extent of Seller's liability for breach of such warranty, and when such defect is verified by Seller, shall be limited, at Seller's option, to the price paid by Buyer to Seller for such product or part thereof, or to the replacement or repair of such product or part thereof, F.O.B Seller's plant. The foregoing warranty is exclusive and is in lieu of all other warranties including any implied warranty for fitness and merchantability. The warranty period will terminate twenty-four (24) months after delivery to Buyer.

10.2 Failure to maintain and operate the products in accordance with Seller's instructions, misuse or abuse or the unauthorized modification of the products shall render the above warranty null and void. The use of parts not manufactured by or authorized by the Seller in Seller's products shall also render the above warranty null and void.

THERE IS NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING NO WARRANTIES OF SUITABILITY OR MERCHANTABILITY AND NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT WILL SELLER BE RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFIT, LOSS OF REVENUES OR LOSS OF USE.

11. SHIPPING

11.1 Shipping terms are F.O.B. Seller's plant. Unless instructed by Buyer on shipping method, placement of values and freight carrier, Seller will use Seller's discretion for shipping method at Buyer's expense. The risk of loss in products shall pass to the Buyer on delivery to freight carrier as set forth herein.

12. TAXES

12.1 Selling prices are less tax. Prices shall be subject to increase without notice by the amount of any sales, use or excise tax levied or charged either by the Federal, State, County, City or other Governmental Agency.

13. TERMS

13.1 Payment terms shall be Net 30 days, subject to prior credit approval by Seller.

14. LIMITATION OF LIABILITY

14.1 Nothing in this contract shall exclude or limit Seller's liability for death or personal injury caused by the Seller's negligence or for any liability that cannot legally be excluded or limited.

EXCEPT AS STATED ABOVE, THE TOTAL AGGREGATE LIABILITY OF THE SELLER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE CONTRACT, WHETHER FOR NEGLIGENCE OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY THE BUYER FOR THE PRODUCT WHICH GIVES RISE TO THE CLAIM.

IN NO EVENT SHALL THE SELLER BE LIABLE FOR LOSS OF PROFIT, LOSS OF USE, LOSS OF BUSINESS, LOSS OF REVENUE OR FOR ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, HOWSOEVER CAUSED.

These clauses set out the entire liability of the Seller (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of this contract or orders placed under it and any representation, statement or tortuous act or omission including negligence arising under or in connection with the contract. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

15. LAW AND JURISDICTION

15.1 The Contract shall in all respects be construed according to and governed by the laws of the state of California. All disputes shall be referred to and resolved by binding arbitration in Los Angeles County, California by JAMS pursuant to its Streamlined Arbitration Rules and Procedures.

15.2 The United Nations Conventions on Contracts for the International Sale of Product 1980 shall not apply to any aspect of this Contract.