

ICE Technology NOHAU Brand Ebedded Systems Tools

TERMS AND CONDITIONS OF SALE

1. **General.** The terms and conditions contained herein constitute the entire agreement between the parties with respect to the subject matter hereof, and these terms and conditions supersede all prior communications and agreements. Acceptance by ICE Technology, herein Seller of any Purchase order is expressly limited to and conditioned upon Purchaser's acceptance of these terms and conditions, which may not be changed or waived except in writing signed by the parties. Any additional, inconsistent or different terms and conditions contained in Purchaser's purchase order or other documents supplied by Purchaser are expressly rejected except such different or additional terms and conditions as may, under these terms and conditions, be subject to negotiation, in which case Seller and Purchaser shall agree to such terms and conditions in writing.

No course of prior dealings between Purchaser and Seller and no usage of the trade shall be relevant to supplement or explain any term used in these terms and conditions. Acceptance or acquiescence in a course of performance rendered under this writing shall not be relevant to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined in the California Uniform Commercial Code is used in these terms and conditions, the definition contained in it shall control.

2. **Authority of Sellers's Agents.** No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the goods sold hereunder, and unless such an affirmation, representation or warranty made by such an agent, employee or representative is specifically included in these terms and conditions, it shall not be constitute a part of the basis of this bargain between Seller and Purchaser and shall not in any way be enforceable.

3. **Prices. and Taxes.** Prices are for delivery of goods F.O.B. Seller's facility. Any sales tax imposed by a governmental authority on or measured by the transaction between Seller and Purchaser shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, Purchaser shall, within ten (10) business days of written request accompanied by proof of payment by Seller, reimburse Seller therefor.

4. **Terms and Methods of Payment.** Except as otherwise set forth on the front of this document, terms of payment are net thirty (30) days from date of invoice. All sales are subject to the prior approval of Seller's Credit Department. If requested by Seller, Purchaser will submit its most current available financial information:

If at any time the financial condition of Purchaser so warrants, or if Purchaser fails to make payment(s) when due, or defaults in any way, Seller may either alter terms of payment, suspend credit and delay shipment or pursue any remedies available at law or under this Agreement. In such event, Seller will be entitled to reimbursement from Purchaser for its reasonable expenses, including attorney's fees. Seller may charge 1-1/2% per month interest or the highest rate permitted by applicable law, whichever is lowest, on overdue accounts.

5. **Security Interest.** Seller shall retain a security interest in the goods (and replacements) delivered hereunder and in the proceeds of such goods until Purchaser has made payment in full for such goods. Purchaser shall, upon request by Seller, execute all documents (including, without limitation, a financing statement) necessary to perfect such security interest. Seller has the right, upon demand, to repossess goods delivered hereunder if Purchaser fails to make timely payment.

6. **Title, Delivery and Delay.** All shipments by Seller are F.O.B. Seller's facility. Title to Product and risk of loss pass to Purchaser upon delivery to carrier at shipping point. The Products shall be shipped to the destination in accordance with Purchaser's Instructions set forth on the other side of this form. In the absence of Purchaser's instructions or if the Purchaser's instructions are deemed unsuitable, Seller reserves the right to deliver the Products to Purchaser in a commercially reasonable manner, but shall not be deemed thereby to assume any liability in connection with the shipment, nor shall the carrier be deemed to be Seller's agent.

Any delivery dates provided to Purchaser are estimates only. Seller will make reasonable efforts to deliver in accordance with these dates; however, Seller will not be liable for failure to deliver as estimated. Seller shall not be liable for any loss or damages as a result of any delay due to any cause beyond Seller's control: including, without limitation: an Act of God, act of Purchaser, fire, theft, accident slowdown, strike, riot, embargo, governmental act,

regulation or request delays of common carriers; inability to obtain necessary labor, materials or manufacturing facilities, or other similar causes. In the case of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. In no event shall Seller's liability for delay exceed the sales price to Purchaser. Seller shall not be liable for any special contingent, indirect or consequential damages (including anticipated profits) resulting from delay unless otherwise specifically negotiated with respect to the purchase order.

7. **Inspection.** Purchaser shall examine all goods immediately upon receipt and before accepting them. Purchaser shall notify Seller in writing within ten (10) days of all claimed shortages and defects, and, if rejection is intended, a specification of the grounds therefor. Otherwise, the goods will be deemed accepted as of the date of receipt.

8. **Warranty.** Seller warrants articles of its manufacture for a period of one year from date of sale except as otherwise set forth on the front of this document. All other products are covered by, and subject to, the terms, conditions, and limitations of the manufacturer's standard warranty, which warranty is expressly in lieu of any other warranty, express or implied, of or by Seller or the manufacturer. The liability of Seller under this warrant is limited, at Seller's option, to replacement with equivalent articles, or an appropriate credit adjustment not to exceed the sales price to Purchaser, provided that (a) Seller is promptly notified in writing by Purchaser upon discovery of defects, (b) the defective articles are returned to Seller, and (c) the defects were not caused by negligence, misuse, improper installation, accident or unauthorized repair or alteration. If any model or sample was shown Purchaser, that model or sample was used merely to illustrate the general type and quality of the goods and not to represent that the goods delivered will necessarily conform to the model or sample.

9. **Limitation of Liability.** The warranty set forth in Section 8 constitutes the sole and exclusive remedy against Seller for the furnishing of nonconforming or defective goods, and Seller shall in no event be liable for any special, contingent, indirect or consequential damages because such goods are nonconforming or defective, or delayed, including but not limited to property damage, anticipated profits, labor expended, delays and loss of use of goods. THE ABOVE WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR SELLER ANY OTHER LIABILITIES.

10. **Software.** Purchaser agrees that software furnished by Seller will be licensed under the terms of the applicable software license agreement and will be subject to Seller's copyright. The Limitation of Liability section herein shall apply to software furnished hereunder.

11. **Export.** Purchaser will not export, either directly or indirectly, any Product or system incorporating such Product without first obtaining any required license or other approval from the U.S. Department of Commerce or any other agency or department of the United States Government.

12. **Waiver.** No claim or right of Seller arising out of a breach of these terms and conditions can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by an authorized officer of Seller.

13. **Assignment.** Purchaser may not assign this order without the express written consent of Seller. Any attempted assignment shall be wholly void and totally ineffective for all purposes unless made in conformity with this section.

14. **Remedies.** Seller shall have all the remedies afforded by the California Uniform Commercial Code as well as any other remedies specifically provided in these terms and conditions.

15. **California Law.** The agreement hereunder shall be governed by, and its terms construed in accordance with, the laws of the State of California, without reference to its conflicts of laws provisions.