



## POWERBUYER™ TERMS AND CONDITIONS OF PART SALES

These terms and conditions (the "Agreement") govern all orders placed with PartMiner WorldWide Inc. or its affiliates ("PartMiner" or "Seller") by the purchaser ("Purchaser") for electronic component parts, products and other goods pursuant to the Purchaser's subscription or membership to PartMiner's PowerBuyer™ solution. Purchaser's placement of any purchase order to PartMiner as a result of its use of the PowerBuyer strategic sourcing services indicates Purchaser's acceptance of these terms and conditions. Unless otherwise provided by Seller, orders are non-cancelable and non-refundable. An order may be cancelled by Purchaser only upon the advance written consent of Seller (which it may withhold at its sole and absolute discretion). As a condition to receiving Seller's written consent, Purchaser shall pay all reasonable cancellation and restocking charges incurred by Seller due to Purchaser's cancellation of the order.

**1. DELIVERY.** All prices quoted and goods shipped are F.O.B. Seller's place of shipment. Title and risk of loss of all goods shall pass to Purchaser when the goods are placed by Seller in possession of a common carrier selected by Seller for shipment to Purchaser. Unless expressly provided by Seller in writing, Purchaser shall pay all freight, handling, special handling, delivery and insurance costs for the shipment of goods. Seller may refuse or delay any shipment if Purchaser fails to pay promptly any payments due to Seller. Seller may, at its option, deliver all goods at one time or in portions from time to time, within the time for delivery provided in the order. Purchaser acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Special handling charges above include special freight in or other handling charges agreed to between Purchaser and Seller.

**2. FORCE MAJEURE.** Seller is excused from performance of any obligation and shall not be liable for delays in delivery or for failure to perform, if its failure or delay in performance is caused by events or conditions beyond Seller's reasonable control, including, without limitation, (i) Acts of God, explosion, flood, lightning, tempest, fire, wash-outs, tornadoes, hurricanes, wind-storms, epidemic, earthquake or accident; (ii) war, hostilities (whether war be declared or not), invasion, act of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil war; (iv) riot, civil commotion or disorder; (v) acts, restrictions, regulations, by-laws, refusals to grant any licenses or permissions, prohibitions or measures of any kind on the part of any governmental authority; (vi) import or export regulations or embargoes; (vii) strikes, boycotts, lock-outs or other industrial actions or trade disputes of whatever nature; (viii) any delay, defaults or other failure or refusal to perform of suppliers or sub-contractors; (ix) incompleteness or inaccuracy of any information which is the responsibility of Purchaser to provide; (x) any failure, default, delay in performance, or any act or omission of any nature whatsoever on the part of the Purchaser, or its employees, agents, suppliers or sub-contractors. In the event of any delay, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of the delay without penalty to the Seller and such delay in performing or failure to perform shall not constitute a breach of this Agreement. PartMiner reserves the right to cancel without liability any order, the shipment of which is or may be delayed for more than 30 days by reason of any such cause.

**3. PRICES.** Prices shall be specified by Seller and shall be applicable for the period specified in Seller's quote. If no period is specified, prices shall be applicable for no more than twenty-four (24) hours. Notwithstanding the foregoing, prices shall be subject to change at any time in the event of any change in Seller's costs or other circumstances beyond Seller's reasonable control. Seller shall notify Purchaser of any changes in price as soon as practicable whereupon Purchaser shall have the option of accepting or rejecting such change, without further liability to Seller. Unless expressly provided by Seller in writing, Purchaser shall pay all freight, handling, special handling, delivery and insurance costs for the shipment of goods, which are in addition to the prices specified by PartMiner for the goods or services. In addition, Purchaser shall also pay Seller for testing and inspection services performed by it or other third party



selected by PartMiner. If PartMiner is providing cost plus pricing, the price shall be a mark-up to PartMiner's order fulfillment, inspection, logistics and delivery cost for the parts.

#### **4. PAYMENT TERMS**

4.1. Purchaser shall pay for the goods in full, without offset or deduction, within the time frame set by PartMiner. If no time is set, Purchaser shall pay for the goods no later than thirty (30) days after delivery. For those sales that do not require payment in advance of or upon delivery, if payment is not received by Seller within the period set forth by Seller, Purchaser shall pay to Seller a late payment charge of 1.5% per month on the unpaid balance or the maximum rate of interest allowed by law, whichever is less, such interest to accrue and compound until all outstanding payments are received in full.

4.2. Time is of the essence with respect to Purchaser's obligation to pay all invoices in a timely manner. If Purchaser fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller shall be entitled to be wholly indemnified for its costs and attorneys' fees (whether or not a suit is brought and at trial, appellate and post-judgment levels).

4.3. All checks are accepted subject to collection upon presentation. Acceptance of any partial payment shall not constitute waiver of Seller's right to payment in full of all amounts owing from Purchaser to Seller.

4.4. Notwithstanding delivery and the passing of risk in the goods, or any other provision of these terms and conditions, the title in the goods shall not pass to Purchaser until Seller has received full payment for the goods agreed to be sold by Seller to Purchaser for which payment is then due.

4.5. Until such time as the title in the goods passes to Purchaser, Purchaser shall hold the goods as Seller's fiduciary agent and bailee, and shall keep the goods separate from those of Purchaser and third parties and properly stored, protected and insured and identified as Seller's property, but shall be entitled to resell or use the goods in the ordinary course of business.

4.6. Until such time as the title in the goods passes to Purchaser, Seller shall be entitled at any time to require Purchaser to deliver up the goods to Seller, and if Purchaser fails to do so forthwith, to enter upon the premises of Purchaser or any third party where the goods are stored and repossess the goods.

4.7. Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Seller, but if Purchaser does so, all monies owing by Purchaser to Seller (without prejudice to any other right or remedy of the Seller) forthwith becomes due and payable.

4.8. Seller may assign accounts receivables to any of its affiliates. In order to defray the costs of customer account administration, to the extent any credit balance or other sum owed to Purchaser by Seller which remains unclaimed by Purchaser for a period of eighteen (18) months, the balance or sum will become the property of Seller.

#### **5. ACCEPTANCE AND RETURN**

Inspection and acceptance of goods shall be Purchaser's responsibility. Purchaser must notify PartMiner in writing of any damage, shortage or other discrepancy to products within 7 days after delivery. After the 7<sup>th</sup> day, Purchaser is deemed to have accepted the products and may not revoke acceptance. Seller reserves the right to request, and Purchaser shall provide, a failure report for defective goods that are rejected before a return will be allowed or RMA issued. In order to return or exchange a defective good, in addition to providing a failure report, Purchaser must request a Return Material Authorization ("RMA") from Seller's customer service department. The customer service representative shall record all requests and, if Purchaser's RMA is accepted by Seller, Seller will forward to Purchaser a return authorization label.



Purchaser must return to Seller and Seller must receive the damaged or defective goods within seven (7) days after Purchaser obtains the label. The return authorization label must be attached to all packaging containing goods returned to Seller. No returns of any type will be accepted without the RMA label. If Purchaser does not request an RMA within the seven days, or requests an RMA for goods that are not damaged or defective, Seller may, at its sole and absolute discretion, issue an RMA and may require that Purchaser pay to Seller a 25% restocking fee plus shipping/freight charges as a condition of issuing to Purchaser the RMA.

## **6. LIMITED WARRANTY**

Subject to Section 7 and other provisions of these terms and conditions, PartMiner will (1) warrant that, to its actual knowledge, the parts are new and original; (2) assign to Purchaser any transferable warranties that the manufacturer or distributor provides to PartMiner; and (3) if the manufacturer or distributor warranty is not transferable to Purchaser, and the parts were purchased from a franchise or other authorized manufacturer distributor, warrant the parts in the same manner, to the same extent, and subject to the same limitations, as contained in the original manufacturer's warranty as if the original manufacturer warranty had been transferred to Purchaser. PartMiner makes no representation, covenant or warranty with respect to the extent or enforceability of the manufacturer's warranty. The use of part numbers or other methods of description is for convenience only and does not constitute any representation by Seller with respect to the performance, specifications, fitness of any part of any purpose or adequacy of any design, specification or program provided to Seller by on behalf of Purchaser or manufacturer or supplier.

**THE FOREGOING WARRANTIES ARE SELLER'S EXCLUSIVE WARRANTIES, AND THE GOODS SOLD UNDER THIS AGREEMENT ARE OTHERWISE SOLD "AS IS" AND "WITH ALL FAULTS." EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATING TO THE GOODS, INCLUDING, WITHOUT LIMITATION, THE DESIGN AND CONDITION OF THE GOODS OR THEIR QUALITY, CAPACITY, SUITABILITY, CONSTRUCTION, PERFORMANCE, MARKET OR RESALE VALUE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Purchaser acknowledges that Seller is acting solely as a third-party distributor of the goods and that, except as otherwise expressly provided, the manufacturer of the goods and/or party from whom Seller purchased the goods shall be responsible for all liabilities, claims, damages, obligations and costs and expenses relating to the goods distributed by Seller. Purchaser agrees to look solely to the manufacturer for compliance with manufacturer's warranty and for maintenance, support and/or repair of goods.

## **7. LIMITATION OF LIABILITY**

7.1 Except as otherwise provided, all claims for any damage, defect, shortages, breach of any warranty, or for any cause whatsoever (whether the claim is based in contract, negligence, strict liability, other tort or otherwise) shall be deemed waived unless made in writing and received by Seller within thirty (30) days after Purchaser's receipt of goods, or if the claim is for non-delivery of goods, within thirty (30) days after the date the goods were to be delivered. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Purchaser of the claim regardless of whether the facts giving rise to the claim shall have then been discovered or whether processing, further manufacture, other use or resale of goods shall have then taken place.

If any claim is valid, except as set forth below, Purchaser's sole and exclusive remedy, and PartMiner's sole liability, shall be for PartMiner to, in its sole discretion: (1) repair the products, (2) replace the products, or (3) refund Purchaser's purchase price. The products must be returned to PartMiner within 30 days of delivery, freight charges prepaid.

**7.2 PURCHASER'S EXCLUSIVE REMEDY FOR BREACH OF THIS AGREEMENT SHALL BE FOR DAMAGES AND, EXCEPT AS OTHERWISE SET FORTH IN SECTION 7.1, SELLER'S**



**TOTAL LIABILITY TO PURCHASER FOR ALL OR ANY LOSSES AND DAMAGES ARISING OUT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED BY SELLER (WHETHER THE CLAIM IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH THE CLAIM ARISES FROM OR, AT SELLER'S SOLE AND ABSOLUTE OPTION, REPAIR OR REPLACEMENT OF THE GOODS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM ANY CLAIM (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, BUSINESS LOSSES, DAMAGE TO PROPERTY, OR ANY LIABILITY OF PURCHASER TO ITS CUSTOMERS OR THIRD PARTIES).** In no event is Seller liable to any third party for any liability, claims, obligations, damages, costs or expenses, including without limitation, any direct, indirect, special, incidental, or consequential damages (including loss of profits, business losses, personal property damage, personal injury and death) arising out of or relating to the sale of goods by Seller to Purchaser or any related services provided by Seller. Seller is not liable for, and Purchaser assumes full responsibility for all personal injury and property damage connected with the handling, transportation, possession, processing, repacking, further manufacture, or other use or resale of goods, whether the goods are used alone or in combination with any other material.

7.3 Goods sold by Seller are not designated for use in life support, life sustaining, nuclear or other applications in which the malfunction of such product can reasonably be expected to result in personal injury or catastrophic property damage. Purchaser and its customers using or selling such goods for such use do so at their own risk and agree to fully indemnify Seller for any damage resulting from such use or sale.

## **8. TAXES**

Seller's prices do not include sales, use, excise or other similar taxes. Accordingly, Purchaser shall pay, in addition to prices specified by Seller, all applicable local, state and federal taxes, including all sales, use, excise or other similar tax, payable with respect to the goods or the transactions contemplated herein, or, alternatively, provide Seller with tax exemption or resale certificate(s) acceptable to the applicable taxing authorities.

## **9. INTELLECTUAL PROPERTY/PROPRIETARY RIGHTS**

Seller disclaims any warranty against infringement with respect to the goods sold pursuant to this Agreement and Seller is not liable with respect to any actual or alleged infringement of any United States or foreign patent, trademark, copyright, mask work right, trade dress, trade secret or similar proprietary rights. Purchaser agrees to indemnify and defend Seller against and hold Seller harmless from any and all damages, liabilities, losses, costs and expenses, including without limitation, attorneys' fees (whether or not a suit is brought and at every tribunal level including appeals and any enforcement proceedings) relating to any claim, lawsuit or other proceeding or threatened lawsuit or proceeding in which there is a claim that Purchaser's use, modification or integration of any goods purchased violates the intellectual property rights of any entity or person.

## **10. INSTALLATION**

Purchaser is solely responsible for the installation and operation of the goods including, without limitation, obtaining all permits, licenses, or certificates required for the installation or use of the goods.



## **11. TECHNICAL ADVICE AND DATA**

Any technical advice offered or given in connection with the use of the goods is an accommodation to Purchaser without charge, and Seller is not liable or responsible whatsoever for the content or use of the advice. Without Seller's consent, Purchaser shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Purchaser for any purpose other than for installation, operation or maintenance of the goods purchased by Purchaser from Seller.

## **12. DEFAULT**

In the event of a default by Purchaser, Seller shall have all the rights and remedies provided under the Uniform Commercial Code as adopted in the State of Colorado, which shall be cumulative with one another and with any other remedies that Seller might have in law and equity, under any agreement of any type or, without limitation, otherwise. The waiver by Seller of any breach of these terms and conditions including default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with the goods furnished or services rendered by Seller to Purchaser, may be brought by Purchaser more than one (1) year after the occurrence of the facts upon which the cause of action arose. Purchaser shall pay to Seller, on demand, all costs incurred by Seller in enforcing, prosecuting, or defending any provision of this Agreement. For the purpose of this Agreement, "costs" includes, without limitation, the fees, costs, and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, and supersedes bonds, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant to trial, appellate, mediation, bankruptcy, arbitration, administrative or judgment-execution proceedings.

## **13. INTEGRATION AND ASSIGNMENT**

This Agreement records the final, complete and exclusive agreement between the parties with regard to the subject matter addressed in it and supersedes any and all prior or contemporaneous oral or written agreements between them regarding the same. No course of prior dealings between the parties and no usage of the trade is relevant to supplement or explain any term used in this Agreement nor is acquiescence in a course of performance rendered under this Agreement relevant to determining the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of performance and opportunity for objection. An amendment or modification of this Agreement will be valid and effective only if it is in writing and signed by both Purchaser and Seller. Any assignment by Purchaser of this Contract or any rights in it, without Seller's advance written consent, shall be void.

## **14. EXPORT CONTROLS**

The sale, resale or other disposition of the goods and any related technology or documentation are subject to export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Purchaser agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export and/or divert any goods to any country to which such export or transmission is restricted or prohibited. Purchaser acknowledges its responsibility to obtain any license to export, re-export or import as may be required. The goods are not to be resold or transferred without direct approval from Seller. The use of the goods in the design, development, production or use of missiles or in any activities related to nuclear, chemical or biological weapons is strictly prohibited. Customer shall hold PartMiner harmless from any damages, liabilities, costs and expenses relating to any lawsuit, threatened lawsuit or other proceeding arising out of a breach or threatened breach of any export/import laws or regulations.



## **15. PURCHASER TERMS AND CONDITIONS**

Goods furnished by Seller to Purchaser are sold only on the terms and conditions stated in this Agreement. Notwithstanding any term or condition on any document of Purchaser, the information and conditions in this Agreement govern and are binding on Purchaser and Seller. Any different or additional terms or conditions contained on Purchaser's purchase order, invoice, confirmation, or any other Purchaser-generated documents are specifically objected to by Seller. Seller's performance of any contract is expressly made conditional on Purchaser's agreement to Seller's terms and conditions contained in this Agreement. Commencement of performance or delivery shall be for Purchaser's convenience only and shall not constitute acceptance by Seller of Purchaser's terms and conditions. If a contract is not earlier formed by mutual agreement between Purchaser and Seller, acceptance of any goods or services by Purchaser shall constitute acceptance by Purchaser of the terms and conditions herein.

## **16. LEGAL PROCEEDINGS**

The validity, enforcement, construction, and interpretation of this Agreement are governed by the laws of the State of Colorado and the federal laws of the United States of America, excluding the laws of those jurisdictions pertaining to resolution of conflicts of laws of other jurisdictions. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Seller and Purchaser (a) consent to the exclusive jurisdiction of the state and federal courts having jurisdiction over the City and County of Denver, Colorado, and (b) waive any defense, whether asserted by motion or pleading, that venue in these courts is improper or an inconvenient venue.

## **17. GENERAL**

All agreements, covenants, conditions and provisions contained herein shall apply to and bind the permitted assignees and successors in interest of Purchaser. If any provision of this Agreement is held to be invalid, illegal, unconscionable, or unenforceable, that provision will be considered separable from the remaining provisions of this Agreement, will be reformed and enforced to the extent that it is valid and lawful, and will not affect the validity, legality, or enforceability of any other provision of this Agreement. The captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof. Nothing in this Agreement, whether express or implied, is intended or should be construed to confer upon or grant to, any person, except Purchaser and Seller, any claim, right or remedy under it.