

## TERMS AND CONDITIONS OF SALE

All quotations and sales by PacketMicro, Inc. ("PacketMicro") are subject to these terms and conditions ("Agreement"). "Customer" means any person or party who purchases Products from PacketMicro.

**1. QUOTATIONS AND ORDERS.** All quotations and sales by PacketMicro are subject to these terms and conditions. Quotes from PacketMicro are invitations to tender and are subject to change at any time without notice. On and after the Effective Date, Customer may, from time to time, order Products from PacketMicro by submitting a purchase order ("Order") to PacketMicro. All Orders are subject to acceptance by PacketMicro. Contracts between Customer and PacketMicro are only formed upon PacketMicro's written acceptance (i.e., PacketMicro signs and returns Order to Customer) or execution of Customer's Order, and shall be subject to this Agreement. PacketMicro reserves the right to allocate the sale of Products among its customers. Orders for special, customized, and value-added Products and Products specifically identified by PacketMicro as non-standard or "NCNR" are non-cancelable, non-reschedulable, non-changeable, and non-returnable. Customer may not change, cancel or reschedule Orders for standard Products without PacketMicro's written consent.

**2. PRICES.** Prices are subject to change at any time. Prices are FOB PacketMicro's facility; and prices are for Products only and do not include taxes, shipping charges, freight, duties, and other charges or fees, such as fees for special packaging and labeling of the Products, permits, certificates, customs declarations and registration (collectively, "Additional Fees"). Customer is responsible for any Additional Fees.

**3. TERMS OF PAYMENT.** Payment of the total invoice amount, without offset or deduction, is due from the payment term date on the invoice or as otherwise approved in writing by PacketMicro. On any past due invoice, PacketMicro may charge (i) interest from the payment due date to the date of payment at 1.5% per month, plus reasonable attorney fees and collection costs; or (ii) the maximum amount that is allowed under the applicable law if PacketMicro's interest rate is deemed invalid. PacketMicro reserves the right to modify terms at any time, including prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of customer's creditworthiness or should customer fail to fulfill any obligation when due. Unless otherwise provided by applicable law, any credit issued by PacketMicro to Customer in respect of any of Customer's accounts will expire if unused for twelve (12) months following the date of issuance of such credit.

**4. DELIVERY AND TITLE.** Unless otherwise specified by PacketMicro in writing, all deliveries by PacketMicro are from PacketMicro's facility. Title and risk of loss pass to Customer upon delivery of the Products to the carrier. PacketMicro's delivery dates are estimates only and subject to timely receipt of supplies by PacketMicro. PacketMicro is not liable for delays in delivery. PacketMicro reserves the right to make partial deliveries and Customer shall accept delivery and pay for the Products delivered. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

**5. LIMITED WARRANTY.** PacketMicro warrants those products assembled or customized by it against defects caused solely by faulty assembly or customization for 12 months after delivery. All other products, and the components and materials utilized in any assembled or customized 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 PacketMicro or the manufacturer. These warranties shall not apply for Product failure or deficiency due to improper storage, alteration, or the consequences of uses for which the Product was not designed or that adversely affect its integrity, reliability, or performance. Customer's exclusive remedy, if any, under these warranties is limited, at PacketMicro's election, to any one of (a) refund of Customer's purchase price, (b) repair by PacketMicro or the manufacturer of any products found to be defective, or (c) replacement of any such product. Customer acknowledges that except as specifically set forth or referenced in this Section, there are no representations or warranties of any kind (including, without limitation, in advertising materials, brochures, or other descriptive literature) by PacketMicro or any other person, express or implied, as to the condition or performance of any products, their merchantability, or fitness for a particular purpose, or otherwise. In the event that PacketMicro gives technical advice with respect to the Products, it is agreed that such advice is given without any liability on PacketMicro's part. PacketMicro assumes no responsibility or liability whatsoever for manufacturer's product specifications or the performance or adequacy of any design or specification provided to PacketMicro by or on behalf of Customer. PacketMicro does not warrant conformity of Products with any samples provided.

**6. PRODUCT RETURN.** Customer may return Products to PacketMicro only with a return material authorization ("RMA") number issued by PacketMicro. Customer must notify PacketMicro in writing of any damage to the outer packaging or the Products, shortage, or other discrepancy ("Visual Defect") within 3 days after receipt of the shipment; otherwise, Customer is deemed to have accepted the Products and may not revoke acceptance. RMAs will be issued only for Visual Defects created solely by PacketMicro or the original manufacturer, and only if Customer satisfies the notice requirement. RMAs will not be granted for damage, shortage, or other discrepancy created by Customer, the carrier or freight provider, or any other third party. Product return pursuant to a warranty requires written notice from Customer to PacketMicro within the warranty period detailing the Product defect. Customer must return the Products to PacketMicro freight prepaid in original manufacturer's shipping cartons or equivalent, along with acceptable proof of purchase, within the warranty period and as specified in the RMA. At PacketMicro's discretion, PacketMicro will return all Products not eligible for return to Customer, freight collect, or hold Product for Customer's account at Customer's expense.

**7. LIMITATION OF LIABILITY.** Except for the warranty coverage referenced in Section 5, above, neither PacketMicro nor its suppliers will have any liability or obligation to customer or any other person for any claim, loss, damage, or expense caused in whole or in part, directly or indirectly, by the inadequacy of any products for any purpose, by any deficiency or defect in any product (whether or not covered by any warranty), by the use or performance of any products or by any failure or delay in PacketMicro performance hereunder, or for any special, direct, indirect, incidental, consequential, exemplary or punitive damages, however caused, including, without limitation, personal injury or loss of business or profit, whether or not customer will have informed PacketMicro of the possibility or likelihood of any such damages.

**8. FORCES BEYOND PACKETMICRO'S CONTROL.** PacketMicro is not liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control, (for example: acts of nature, acts or omissions of the Customer, operational disruptions, man-made or natural disasters, epidemic/pandemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labor or materials through its regular sources).

**9. USE OF PRODUCTS.** Customer shall comply with the manufacturer's or supplier's Product specifications. Products are not authorized for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or serious property damage. If Customer uses or sells the Products for use in any such applications or fails to comply with the manufacturer's Product specifications, Customer acknowledges that such use, sale, or non-compliance is at Customer's sole risk.

**10. EXPORT/IMPORT.** Certain Products sold by PacketMicro and other related technology and documentation are subject to export control laws, regulations and orders of the United States, the European Union, and/or other countries ("Export Laws"). Customer shall comply with such Export Laws and obtain any license, permit, or authorization required to transfer, sell, export, re-export, or import the Products, related technology and/or documentation. Customer further affirms and agrees that these Products shall not be used (or delivered to or made available for use by or for anyone) in or for any activity or end-use restricted by the laws or regulations of the United States or any other applicable jurisdiction, including the design, development, production or use of nuclear, missile, chemical, biological or other weapons of mass destruction or military-related technology and/or activities.

**11. PRODUCT INFORMATION.** Product information (for example, statements or advice (technical or otherwise) advertisement content, and information related to a Product's specifications, features, export/import control classifications, uses or conformance with legal or other requirements) is provided by PacketMicro on an "AS IS" basis and does not form a part of the properties of the Product nor constitute any express warranties. PacketMicro makes no representation as to the accuracy or completeness of the Product information, and disclaims all representations, warranties and liabilities under any theory with respect to the Product information. PacketMicro recommends Customer validate any Product Information before using or acting on such information. All Product information is subject to change without notice. PacketMicro is not responsible for typographical or other errors or omissions in Product information.

**12. ELECTRONIC ORDERS.** In the event that any part of the purchase and sale of Products utilizes electronic data interchange, Customer's internal portal or third-party portal, or any other electronic means ("Electronic Purchase Order"), this Agreement will continue to apply to the purchase and sale of Products between Customer and PacketMicro.

**13. CONFIDENTIALITY.** The Parties will comply with the terms of any nondisclosure agreement between PacketMicro and Customer ("NDA"). If no such agreement exists, each Party (a) will protect and keep confidential the existence of this Agreement (including all Orders), its terms and conditions and any other information obtained from the other Party in connection with this Agreement or related to the Products that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including all information relating to PacketMicro's technology, customers, business plans, marketing activities, and finances), (b) will use such information only for the purpose(s) for which it was originally disclosed and in any case only for the purpose of fulfilling its obligations under this Agreement, and (c) will destroy or return all such information to the other Party promptly upon the termination of this Agreement.

**14. NOTICE.** Any notice or other communication required or permitted under this Agreement shall be in writing and deemed to have been duly given (i) five (5) business days following deposit in the mails if sent by registered or certified mail, postage prepaid, (ii) when sent, if sent by facsimile transmission and if receipt thereof is confirmed by machine generated receipt, (iii) when delivered, if delivered personally to the intended recipient and (iv) one business day following deposit with a nationally recognized overnight courier service, in each case addressed to the appropriate Party at the address set forth herein. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. All deliverables and writing provided hereunder including notices shall be in English.

**13. GENERAL.**

- a. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California. The parties waive any right to trial by jury.
- b. In the event of any dispute between the Parties arising out of or related to this Agreement, both Parties agree that the dispute will not be resolved by lawsuit; instead, the Parties shall attempt in good faith to resolve the matter within thirty (30) days after the date of notice (the "Notice Date"). Any disputes not resolved by good faith discussions shall be referred to senior executives of each Party, who shall meet at a mutually acceptable time and location within sixty (60) days after the Notice Date and attempt to negotiate a settlement. If the Parties are unable to work out the dispute among themselves after good faith negotiations within the said 60-day period, then, such disputes shall be resolved exclusively by binding arbitration in Santa Clara County, California, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedure. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This clause does not preclude Parties from seeking provisional/ equitable remedies in aid of arbitration from a court of competent jurisdiction.
- c. Customer, by accepting any Products, making any payments or ordering any Products, regardless of whether it previously received these terms and conditions or not, will be deemed to have assented to these terms and conditions.
- d. Customer may not assign this Agreement without the prior written consent of PacketMicro, and PacketMicro's affiliates may perform PacketMicro's obligations under this Agreement. This Agreement is binding on the Parties' successors and assigns.
- e. This Agreement can only be modified in writing signed by authorized representatives of both PacketMicro and Customer.
- f. PacketMicro and Customer are independent contractors and agree that this Agreement does not establish a joint venture, agency relationship, or partnership between them.
- g. PacketMicro's failure to object to any document, communication, or act of Customer will not be deemed a waiver of any of these terms and conditions.
- h. The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.
- i. Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses, and Customer will comply with such rights.
- j. Customer and PacketMicro will comply with applicable laws and regulations.
- k. This Agreement, together with the NDA, and all Orders issued hereunder, which are incorporated in and made a part of this Agreement, constitute the entire agreement between the Parties with respect to the subject matters hereof and supersedes any previous or contemporaneous oral or written agreements, understandings, and discussions regarding such subject matters.

- I. In the event that any conflict exists between the terms and conditions of this Agreement and any other terms and conditions attached to or incorporated into this Agreement as an addendum or other attachment that cannot be resolved on the face of such documents, then the terms of the Agreement will control unless the signed addendum or attachment specifically identifies the provision of this Agreement being changed, amended, replaced or superseded.