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**1. APPLICABLE TERMS AND CONDITIONS**

All CPI Products and services (including CPI-produced hardware, firmware and software) are furnished only on the terms and conditions stated herein and on the face of the applicable CPI quotation to the exclusion of any Buyer terms and conditions in any specific order documentation, preprinted or otherwise, except as to identification and quantity of Products. CPI's performance of any contract is expressly conditional on Buyer's agreement to CPI's terms and conditions of sale, and in the absence of such agreement shall be for Buyer's convenience only, shall not create any contractual obligation and shall not be construed as acceptance by CPI of Buyer's terms and conditions printed or stated in its orders. Buyer's acceptance of any Product or service shall be deemed acceptance of CPI's terms and conditions below. If this is a U.S. Government subcontract, U.S. Government clauses which provide rights, benefits or protections to Buyer shall equally apply to provide the same rights, benefits or protections from Buyer to CPI. In all other respects these CPI terms and conditions of sale shall govern Buyer's relationship with CPI.

**2. ORDERS, QUOTATIONS AND PRICES**

CPI's prices, quotations and contracts for Products and services are subject to the following, unless otherwise stated in CPI's quotation or other writing signed by an authorized representative of CPI. In case of a conflict between the terms and conditions stated herein and those appearing on the face hereof the latter shall control:

- (a) All purchase orders shall be subject to written acceptance by CPI only at its plant or distribution center from which the Products are shipped or at CPI's principal office in Palo Alto, California.
- (b) UNLESS OTHERWISE SPECIFIED IN WRITING, ALL QUOTATIONS ARE FIRM FOR, AND EXPIRE, THIRTY (30) DAYS AFTER ITS DATE AND CONSTITUTE OFFERS, provided that, budgetary quotations and estimates, and quotations to non-US. Customers, are solicitations for offers to purchase, are for preliminary information only and shall neither constitute offers, firm pricing, not impose any responsibility or liability upon CPI.
- (c) All prices quoted are for Products and services only. CPI's prices exclude and Buyer shall be responsible for all ordinary and necessary charges incidental to the sale incurred by CPI and billed by CPI to Buyer, including but not limited to charges for taxes (including, without limitation, any sales tax, use tax or similar tax), license fees, customs fees, duties and other related charges. The total price to Buyer shall be adjusted to include costs of transportation, special packing and insurance incurred by CPI in accordance with agreed shipping and risk terms as referred to below.
- (d) Clerical and typographical errors are subject to correction.
- (e) Prices quoted are for Products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than CPI's standard tests, and other than CPI's normal domestic commercial packaging, unless expressly agreed to in writing by CPI. All published prices are subject to change without notice.
- (f) Published weights and dimensions are approximate only. Manuals, programs, listings, drawings, or other documentation required hereunder must be referenced specifically and will be the latest applicable version.

**3. TERMS OF PAYMENT**

UNLESS CREDIT IS GRANTED, PAYMENT IS DUE UPON DELIVERY. The price of each Product is based upon the payment schedule set forth in CPI's Quotation. Any alternative payment schedule and resulting price change must be approved in writing by CPI. All payments for Products released and shipped on approved credit accounts shall be due in full thirty (30) days from date of invoice unless otherwise provided. Buyer's failure to comply with the above shall be regarded as a fundamental breach of contract. Past due balances shall be subject to a service charge of 1 and ½ percent per month but not to exceed the maximum amount permitted by applicable law. CPI may cancel or delay delivery of Products in the event of an arrearage in Buyer's account. CPI may waive any default without waiving any prior or subsequent default. CPI shall retain a purchase money security interest in all Products, and the proceeds thereof, until Buyer has made payment in full in accordance with the terms hereof. Buyer shall cooperate fully with CPI to execute such documents and accomplish such filings and/or recordings as CPI may deem necessary for the protection of its interests in the Products furnished to Buyer.

**4. TRANSPORTATION AND RISK OF LOSS**

Except as otherwise provided herein, or in accordance with expressly agreed Incoterms 1990, all shipments are FOB CPI's plant with all transportation and insurance at the expense of Buyer, and risk of loss or damage to Products shall pass upon delivery to the transportation company. For Products shipped FOB destination within the United States, risk of loss or damage shall pass to Buyer upon arrival of the transportation company at Buyer's dock. For Products shipped **outside** the United States and its possessions, title and risk of loss or damage shall pass from CPI to Buyer when Products arrive at the country of destination, notwithstanding any shipment terms to the contrary. Unless otherwise expressly agreed in writing, CPI may insure to full value of Products shipped at Buyer's expense or declare full value to the transportation company at time of shipment. Buyer shall inspect all Products upon receipt and file all claims with the transportation company when there is evidence of damage, concealed or external.

**5. PERFORMANCE**

CPI shall not be liable for any delay in delivery or other performance hereunder which is due to unforeseen circumstances, or to causes beyond its control, including, without limitation, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; supplier, subcontractor or Buyer caused delays; inability to obtain or substantial rises in the prices of labor, materials or manufacturing facilities curtailment of or failure to obtain sufficient electrical or other energy supplies; technical difficulties; or compliance with any governmental law, regulation, or order, including but not limited to U.S. Export Administration Regulations. Provided any such delay is neither material nor indefinite, performance shall be deemed suspended during and extended for such time as it is so delayed, and thereafter the other party shall accept performance hereunder. Delay in performance shall not be considered material or indefinite unless it exceeds or is reasonably estimated to exceed six (6) months. In the interest of conservation of scarce materials, and efficient use of high value parts and components, CPI may substitute remanufactured parts and components which meet the same quality standards as other materials and are covered by the same warranty.

**6. ACCEPTANCE**

The furnishing of a Product by CPI to the Buyer shall constitute acceptance of the Product by Buyer, unless notice of defect or nonconformity is received by CPI in writing within thirty (30) days of receipt of the Product at Buyer's designated receiving address; provided that, for Products for which CPI agrees in writing to perform acceptance testing (a) after installation, or (b) at CPI's facility by a Customer Source Inspector (CSI), the completion of CPI's applicable acceptance tests, or execution of CPI's acceptance form by Buyer, shall constitute final acceptance of the Product by Buyer. Notwithstanding the above, any use of a Product by Buyer, its agents, employees, contractor or licensees, for any purpose after its receipt, shall constitute acceptance of the Product by Buyer. CPI may repair or, at its option, replace defective or nonconforming parts after receipt of notice of defect or nonconformity.

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**7. ASSIGNMENTS AND TERMINATIONS**

No order accepted by CPI may be terminated, canceled, modified or assigned by Buyer except by mutual agreement in writing. Any attempt to do so without CPI's written consent shall be void. In any such event, with or without CPI's consent, for any order accepted by CPI and terminated or canceled by Buyer prior to deliver: (1) Buyer will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Buyer at the time of CPI's receipt of notice of termination (2) Buyer will pay all costs, direct and indirect, which have been incurred by CPI with regard to Products which have not been completely manufactured at the time of CPI's receipt of notice of termination, plus a pro rata portion of normal profit on the contract and (3) Buyer will pay a termination charge on all other Products affected by the termination. For any order terminated or canceled by Buyer after delivery, Buyer agrees to pay CPI an additional charge determined solely by CPI to cover lost profits as determined in accordance with the Uniform Commercial Code or other applicable law. CPI's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, CPI will divert completed parts, material or work-in-process from terminated contracts to other customers whenever, in CPI's sole discretion, it is practical to do so.

**8. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

CPI shall, at its own expense, defend or settle any claim that the design or manufacture of any Product furnished in CPI's commercial line of Products, or manufactured to specifications set by CPI, constitutes infringement of any patents or other intellectual property rights of the United States, Canada, Japan, the European Community country in which the Buyer takes deliver of the Product or in another country where Buyer takes deliver of the Product if CPI agrees in writing to include such a country; provided Buyer informs CPI immediately and supports CPI if requested. If the Product is held to constitute an infringement and its use is enjoined as a result of any lawsuit or proceeding, CPI shall, at its own expense and sole option, either procure a license to protect Buyer against the claim, modify or replace the Product with a non-infringing product, or accept return of the Product and refund its purchase price, less reasonable depreciation. CPI EXPRESSLY EXCLUDES from liability and Buyer shall hold CPI harmless from: any other claims, liabilities, expenses, costs, and damages resulting from claimed infringement of patents, trademarks, copyrights or any other intellectual property rights; any Buyer expenses of defense and any claims settled by Buyer without CPI's prior written consent; any claims arising from a use or combination of the Product with any other equipment, and processes, programming application, apparatus or materials not furnished by CPI under this contract; any claims based on items made with the Product furnished by CPI under this contract; or any claims arising out of compliance by CPI with Buyer's designs, specifications or instructions. The foregoing states CPI's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights and is subject to the DAMAGES AND LIABILITY provisions herein.

**9. WARRANTY**

Products, parts and accessories manufactured and sold by CPI and services provided by CPI in connection with Products are warranted to the original purchaser from CPI to be free from defects in material and workmanship and to be in substantial compliance with operational features of CPI's published specifications at the time of sale. CPI's warranty shall continue for the period of time specified on CPI's quotation or agreed to in writing by CPI. If no period of time is stated, then such warranty is limited to thirty (30) days. CPI's standard applicable Product warranties are incorporated herein by this reference. Repair, or at CPI's option, replacement of defective Products parts or accessories shall be the sole and exclusive remedy under warranty. If in CPI's opinion such repair or replacement is not feasible, or if such remedy fails of its essential purpose, CPI may refund or credit an equitable portion of any sums paid by Buyer for the Product or Service. In-warranty repair or replacement of parts are warranted only for the unexpired portion of the original warranty period. **THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE, OR APPLICATION.** Some experimental, developmental or special application products, or products with a life test requirement, are sold without warranty. **IN SUCH CASE, CPI WARRANTS THAT THE PRODUCTS MEET APPLICABLE SPECIFICATIONS WHEN SHIPPED BY CPI BUT CPI SHALL HAVE NO OTHER OR FURTHER RESPONSIBILITY THEREFOR, WHATSOEVER.**

**10. WARRANTY REPLACEMENT AND ADJUSTMENT**

All claims under warranty must be made promptly after occurrence of circumstances giving rise thereto and must be received within the applicable warranty period by CPI or its authorized representative. Such claims should include the Product type and serial numbers, and a full description of the circumstances giving rise to the claim. Before any Products are returned for repair and/or adjustment, written authorization from CPI or its authorized representative for the return and instructions as to how and where these Products should be shipped must be obtained. Any product returned to CPI for examination shall be sent prepaid via the means of transportation indicated as acceptable by CPI. CPI reserves the right to reject any warranty claim not promptly reported and any warranty claim on any item that has been altered or has been shipped by unacceptable means of transportation. When any Product is returned for examination and inspection, or for any other reason, Buyer shall be responsible for all damage resulting from improper packing or handling, and for loss in transit, notwithstanding any defect or nonconformity in the Product. In all cases CPI has sole responsibility for determining the cause and nature of failure, and CPI's determination with regard thereto shall be final. If it is found that CPI's Product has been returned without cause and is still serviceable, Buyer will be notified an the Product returned at its expense; in addition, a charge for testing and examination may, in CPI's sole discretion, be made on Products so returned.

**11. DAMAGES AND LIABILITY**

**CPI'S TOTAL LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY CPI FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, RESULTING IN THE LOSS OR DAMAGE CLAIMED. IN NO EVENT SHALL CPI BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL LOSS OR DAMAGES OF ANY KIND, SUCH AS BUT NOT LIMITED TO LOST BUSINESS REVENUE, LOST PROFITS OR COSTS OF DOWNTIME RESULTING FROM CPI'S PRODUCTS OR SERVICES, HOWEVER CAUSED, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY.** Liability to third parties for bodily injury, including death, resulting from CPI's performance or Products shall be determined in accordance with applicable law and shall not be affected by the liability limitations stated above in this paragraph.

**12. DISPUTES/ARBITRATION**

All disputes, controversies or claims of any kind arising from or in any way related to this contract, its breach, its termination, its invalidity, or the Products, including the jurisdiction of the arbitral panel, shall be settled by final and binding arbitration. For sales to U.S. customers, arbitration shall be in Palo Alto, California under the rules and procedures of the American Arbitration Association ("AAA") and shall be governed by the commercial law of the state from which the Product is shipped. If the sale is international, arbitration shall be conducted under the AAA's international Arbitration Rules and the commercial laws of the UN Convention on contracts for the International Sale of Goods (CISG). If the sale is between entities within another country, the commercial law of that country and the Jurisdiction provisions of CPI's standard terms and conditions of sale for that country shall apply. The arbitral tribunal shall not award punitive damages. The arbitral tribunal award shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement. No claims, regardless of form, arising out of, or in any way connected with this contract, the Products or services furnished by CPI, may be brought by Buyer more than one (1) year after the cause of action as accrued or performance under this contract has been completed or terminated, whichever is earlier.