

### **Credit Agreement & Terms & Conditions**

All sales by Seller and its affiliates and subsidiaries are subject to these terms and conditions unless a separate written purchase agreement or credit agreement provides otherwise. In case of any inconsistency between this Credit Agreement & Terms and Conditions and any other statement of any term or condition on Seller's invoice or its website, this agreement shall control. You should read and understand these terms before purchasing.

#### **Acceptance & Cancellation of Orders**

Each order for goods is subject to acceptance in writing by a duly authorized officer of Seller. Any written acknowledgment by Seller of receipt of an order or shipment in and of itself constitutes such acceptance. Buyer may cancel orders accepted by Seller only upon Seller's written consent, in Seller's sole discretion.

#### **Pricing**

Seller's quoted prices do not include shipping charges, delivery charges, any applicable sales or use taxes, or import or customs duties, which may be added to the cost as appropriate.

#### **Delivery & Shipment**

Seller's normal shipment terms are FOB Seller's facility, but unless otherwise agreed, Seller will arrange for transportation and insurance for the buyer and include the costs as additional items on the invoice. As of January 2008, insurance is typically about one-half percent (0.5%), but Seller will charge the actual rate; freight charges will be as established by the carrier for the delivery appropriate to the Buyer's order. Notwithstanding Seller's arranging for transportation and insurance, risk of loss of or damage to the goods transfers to Buyer when the carrier receives the goods from Seller. Choice of carrier and shipping method and route shall be at the election of Seller unless specifically designated by the Buyer. Despite specific selection of preferred carrier(s) by Buyer, Seller may elect to choose a different carrier for reasons of reliability or access to specific geographic zones or for any other reasonable business grounds. Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, which causes shall include without limitation, acts of God, acts or omissions of Buyer or civil or military authorities, fire, strikes, epidemics, quarantine restriction, floods, earthquakes, riot, war, delays in transportation or inability to obtain necessary labor materials or supplies ("DELAY"). In the event of any such DELAY, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of such delay without penalty to the Seller. Seller shall be entitled to refuse or delay shipments for failure by Buyer to pay promptly any payments due Seller, whether on this or any other contract between Seller and Buyer. Seller shall have the right to deliver all goods covered hereby at one time or in portions from time to time within the time for delivery provided in such order, subject to the terms of this paragraph.

#### **Terms & Payment**

- a) Payment terms are prepaid unless otherwise agreed. During the entire time this agreement is in effect, Seller reserves the right to refuse to extend credit or impose or alter any credit terms in its sole discretion. If requested by Seller, Buyer will deliver to Seller within 45 days after the end of each fiscal quarter a detailed balance sheet and income statement for the Buyer's prior fiscal year and quarter that will have been prepared in accordance with generally accepted accounting principles.
- b) Unless otherwise specified by Seller in writing (refer to payment term on the sales invoice), payment in full of the net amount owing without offset or deduction is due: 15 days from date of invoice for orders sent with Net 15 terms; 30 days from date of invoice for orders sent with Net 30 terms; 45 days from date of invoice for orders sent with Net 45 terms; and 1 day from date of invoice for orders sent with payment in advance, COD or Net Due Terms. If payment is not

received within the specified period, a late payment charge of 1.5% per month or the maximum allowed by law, whichever is less, shall be paid by Buyer.

- c) All checks and payments accepted by Seller are subject to collection and Buyer agrees to pay all costs of such collection, including reasonable attorney's fees and costs. Seller may apply any checks or payments received from Buyer against any obligation of Buyer to Seller under this or any other agreement, notwithstanding any statement appearing on or referring to such check.
- d) Buyer hereby grants Seller a security interest in any goods shipped under this agreement, including all accessions to and replacements of such goods and the proceeds thereof to secure the payment of the purchase price for such goods and all other amounts owing under this agreement. Buyer agrees that Seller may file one or more financing statements to perfect Seller's security interest in the goods and their proceeds. Nonetheless Buyer agrees to cooperate fully with Seller in executing any additional documents, instruments, financing statements or amendments thereof as Seller may deem necessary or advisable to maintain and continue the security interest created by this agreement.

### Inspection & Acceptance of Goods

Buyer shall be responsible for conducting any final acceptance tests on goods if necessary, which tests shall be completed as soon as reasonable possible after delivery. The goods shall be deemed accepted by Buyer unless Buyer notifies Seller in writing of Buyer's rejection of the goods and the reason for such rejection within 5 calendar days after delivery of the goods to the Buyer. Buyer agrees that in no event shall a reasonable time for any revocation of Buyer's acceptance exceed twenty-five (25) calendar days from receipt of the goods, that any goods rejected or as to which acceptance is revoked shall be received at Seller's facility within five (5) business days after date of rejection or revocation of acceptance in original intact packaging and in good condition deemed acceptable to Seller in its sole discretion, without any serial numbers, affixed labels, or any part thereof altered, having been replaced or removed, and accompanied by a specification in writing of the defects involved. Time is of the essence in all provisions of this paragraph. With respect to goods timely rejected and timely returned or as to which buyer timely revokes acceptance and timely returns as provided in this paragraph, Seller shall credit the account of Buyer or replace, with an additional shipping charge only, to Buyer all goods which at the time of delivery are not in accordance with manufacturer's specifications of the goods delivered. Seller shall be entitled to examine such goods at Seller's or Buyer's facilities, at Seller's option, prior to return. Final inspection and determination whether goods are in accordance with their manufacturer's specifications shall be made at Seller's facility or may be based upon the manufacturer's actual test report of the goods delivered (manufacturer of the memory, for example). Any return of any goods shall be subject to the procedures for returns and replacements of goods under the Return Policies section of this agreement.

### Return Policies

The return of any goods for any reason shall be covered by these Return Policies. Before any return, Buyer must request and obtain a Return Merchandise Authorization, ("RMA") by emailing Seller at [rma@oempcworld.com](mailto:rma@oempcworld.com) or by obtaining RMA number online. Any such request must include Seller's invoice number, a description of the items, the quantity of each items sought to be returned, the date Buyer received the goods, and a statement of all reasons for the return.

Upon issuance of an RMA, Buyer shall return the goods, freight prepaid (Seller does not accept COD shipments), with the RMA number visible conspicuously on the outside. Any return of any goods shall be subject to the 'Warranties' section of this website including the terms of applicable insurances and as stated on the website.

Seller cannot accept merchandise for return without an RMA number. The Buyer will be solely responsible for loss or misplacement of goods returned without an RMA number

### Shipping Damage or Loss

Buyer understands that all shipping damage to, or loss of, goods shipped pursuant to Seller's normal shipping term, which is F.O.B. Seller's facility, is the Buyer's sole responsibility, and is subject to whatever insurance has been arranged. To make a claim for loss or damage under insurance by Seller, Buyer must register a claim with Seller on the insurance claim form on its website. Seller will credit the Buyer for the loss if and only if the insurance company has approved a claim for the loss with Seller. Seller will not be responsible for any general, special, consequential, indirect or punitive damages in connection with the loss or damage of merchandise during shipping.

### Installation

Buyer shall be solely responsible for the installation and operation of the goods covered hereby, including without limitation the obtaining of all permits, licenses, and certificates required for the installation or use of such goods.

### Offset of Amounts Owed to Buyer

If Seller owes Buyer any sums because of goods purchased from Buyer, overpayment to Seller or because Seller has credited Buyer for returned goods or discounted a purchase to Buyer, Seller at its sole discretion may set off the owed amount against any other amounts owed by Buyer to Seller.

### Credit Memos

Buyer may not apply a credit to any open invoice without issuance of a credit memo by Seller. Credit memos may be issued in Seller's sole discretion.

### Seller's Right To Increase Prices

Seller reserves the right to increase the selling price of any and all goods in case of an increase in price by Seller's supplier. The selling price quoted shall, upon increase in price by Seller's supplier, be increased by a percentage equal to the percentage of increase in Seller's cost for goods, and Buyer agrees to pay any such increased price in accordance with the terms hereof. Any exception to this provision must be agreed to in a separate writing signed on behalf of Seller.

### **PRODUCT WARRANTY AND DISCLAIMER**

**SELLER'S SOLE WARRANTY IS THAT THE ANY GOODS SHALL, AT THE TIME OF RECEIPT BY BUYER, BE IN CONFORMITY WITH THE ORIGINAL SPECIFICATIONS OF THE MANUFACTURER OF THE MEMORY SOLD AND SHIPPED.**

**SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY GOODS PURCHASED OTHER THAN PURSUANT TO SELLER'S WRITTEN ADVERTISEMENT OR WRITTEN RECOMMENDATION THAT THE MEMORY IS APPROPRIATE FOR THE MACHINE IN WHICH IT IS INSTALLED, EXCEPT THAT, IF THE GOODS ARE SELLER-BRANDED, SELLER WARRANTS THAT THEY WILL CONFORM TO THEIR MANUFACTURING SPECIFICATIONS AT THE TIME OF RECEIPT BY BUYER AND FOR THIRTY DAYS THEREAFTER IN NORMAL USE (SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY RELATED TO THE SPECIFIC APPLICATION OR USE OF THE MEMORY IN ANY SPECIFIC APPLICATION. RESPONSIBILITY FOR THE DETERMINATION OF WHETHER SPECIFIC MEMORY MODULE(S) OR MEMORY PART NUMBERS ACTUALLY WORK IN THE APPLICATION OF THE USER OF THE MEMORY LIES SOLELY WITH THE PURCHASER OR USER). GOODS THAT ARE NOT SELLER-BRANDED ARE "THIRD PARTY PRODUCTS." FOR THIRD-PARTY PRODUCTS PURCHASED OTHER THAN PURSUANT TO SELLER'S WRITTEN ADVERTISEMENT OR RECOMMENDATION THAT THE MEMORY IS APPROPRIATE FOR THE MACHINE IN WHICH IT IS INSTALLED, THE SOLE WARRANTY SHALL BE THE MANUFACTURER'S WARRANTY. PLEASE REFER TO THE INDIVIDUAL PRODUCT FOR WARRANTY INFORMATION.**

**SELLER DOES NOT WARRANT THAT ANY SPECIFIC APPLICATION WILL OPERATE CORRECTLY OR AT ALL.**

**THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND BUYER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER.**

## LIMITATIONS ON DAMAGES

**IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SALE, INSTALLATION, USE, OPERATION, SERVICE OR REPAIR OF ANY PRODUCT WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, WHETHER OR NOT SELLER SHALL HAVE BEEN ADVISED AS TO THE POSSIBILITY OR REASON FOR ANY SUCH POTENTIAL LOSS OR DAMAGE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF SELLER'S WARRANTY OF THE PRODUCTS IS STATED HEREIN. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE ORIGINAL COST TO BUYER OF THE SPECIFIC UNITS OF THE PRODUCT GIVING RISE TO THE CLAIM.**

## Proprietary Rights

Seller shall have no liability of any kind with respect to any actual or alleged infringement of any United States or foreign patent, trademark, copyright, deskwork right, trade secret or other intellectual property or proprietary right. Buyer agrees to look solely to the manufacturer or licensor of the products with respect to any claim of infringement. Furthermore Buyer agrees to protect, defend, indemnify, and hold harmless Seller from all sums, costs, expenses, and attorney's fees, which Seller may incur or be obligated to pay as a result of any claims, demands, causes or action, or judgments arising out of or relating to any use, modification, or enhancement of the goods purchased by the Buyer unless such use, modification, or enhancement is approved in writing by the manufacturer or licensor of the goods.

## Use of Products In Life Support Applications

Goods sold by Seller are not authorized for use as life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death is likely to occur. Any such use or sale of goods is at the sole risk of the Buyer, and Buyer agrees to indemnify and defend Seller against and hold Seller harmless from all damages, costs and expenses, including attorneys' fees and costs, relating to any claim, lawsuit or threatened lawsuit arising out of such use or sale.

## Technical Advice & Data

Any technical advice offered or given in connection with the use of any goods is an accommodation to Buyer, and Seller shall have no responsibility or liability whatsoever for the content or use of such advice. Without Seller's prior written consent, Buyer shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Buyer for any purposes other than for installation, operation or maintenance of goods purchased by Buyer.

## Software

All computer software delivered by Seller to Buyer is licensed pursuant to separate licensing agreements or other arrangements directly to Buyer from the owner of the software or other third party. Buyer acknowledges receipt of a separate agreement pursuant to which software delivered to Buyer is licensed. Buyer acknowledges that Seller is not a party to such license with respect to software supplied hereunder. Buyer agrees to look only and directly to the licensing party in connection with all maintenance, support, infringement and warranty claims relating to software delivered by Seller.

## Default

In the event of any default, the Buyer shall pay all costs incurred by Seller in collecting any amounts due under this agreement, including reasonable attorney's fees and costs. The waiver by Seller of any breach hereof or default in any payment shall not be deemed to constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of the remedy at another time or of any other remedy at any time. No action regardless of form arising out of or in any way relating to the goods furnished or services rendered by Seller may be brought by Buyer more than one year after the cause of action first accrued.

Entire Agreement & Assignment

This agreement sets forth the only terms and conditions and is the entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written negotiations, communications and agreements with respect thereto. No terms or conditions in any order or other writing by Buyer, course of prior dealings between the parties or usage of the trade shall amend, vary, supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. No modification of this agreement shall be binding upon Seller unless reduced to writing and signed by both Seller and Buyer. No agent, employee, or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty covering the goods sold under this agreement. Unless an affirmation, representation or warranty made by an agent, employee, or representative is specifically included within this agreement, it has not formed a part of this agreement and shall not in any way be enforceable against the Seller. Any assignment of this agreement or any rights hereunder, wholly or in part, by Buyer without Seller's written consent shall be void.

Non-Applicability of Buyer Terms

Notwithstanding any terms or conditions on Buyer's order, the terms and conditions on this agreement control all dealings between Buyer and Seller. Any conflicting statements or terms on Buyer's purchase orders, invoices, confirmation or other Buyer generated documents ("Buyer Documents") are negated by this agreement. Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's terms and conditions of sale here unless otherwise specifically agreed to in writing by Seller. In the absence of such agreement, commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any goods or services shall be deemed acceptance of the terms and conditions stated herein.

General

This agreement and performance by the parties hereunder shall be governed and construed in accordance with the laws of the State of California, but excluding its conflict of laws provisions. The parties expressly exclude the applicability of the United Nations Convention on International Sale of Goods. Any and all actions or proceedings arising out of or relating to this agreement or the goods or transactions shall, at Seller's sole option, be brought in or transferred to the state or federal court for Santa Clara County, California. Buyer consents to such jurisdiction, which, at Seller's option, shall be exclusive. This agreement shall apply to and bind the assignees and successors in interest of Buyer. If any provision or part of this agreement is held invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The captions used herein are for the convenience only and shall not affect its interpretation.

**Attorney Fees:** In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

Please initial each page lower right and complete below and return by fax 408-521-1888 or email to sales@oempcworld.com

Customer Name and address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Sign and print name and title

\_\_\_\_\_  
Date