



## TERMS AND CONDITIONS OF SALE

**ANY ADDITIONAL OR DIFFERENT TERMS IN BUYERS DOCUMENTS ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF THEM IS HEREBY GIVEN. ACCEPTANCE BY BUYER OF A SHIPMENT UNDER THIS ORDER CONSTITUTES ACCEPTANCE OF ALL TERMS OF THIS "TERMS AND CONDITIONS OF SALE".**

1. **Quotations** - Except when a quotation expressly provides otherwise, written quotations by Eminess Technologies, Inc. ("Seller") shall expire automatically thirty (30) days after the date appearing on the quotation unless withdrawn sooner.
2. **Acceptance of Purchase Orders** - Notwithstanding any contrary language of Buyer's purchase order or other acceptance, Buyer shall be bound by this offer and its terms and conditions when Buyer returns its purchase orders or otherwise indicates its acceptance of this offer, or when Buyer accepts delivery from Seller of any of the goods described in the attached order confirmation. This offer expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms proposed by Buyer are rejected unless expressly approved in writing by Seller.
3. **Prices** - The prices herein stated are for the quantity and delivery specified in Seller's Order Confirmation.
4. **Payment Terms** - Terms to Buyers of satisfactory credit located in the United States are net thirty (30) days from invoice date on all domestic shipments. Sales made to customers outside the United States are also net thirty (30) days from invoice date on all shipments. Acceptance of a purchase order is subject to cash, check or bank wire transfer. To avoid delay in filling an order, first time Eminess Technologies, Inc. Buyers are required to submit a completed credit application with first order, remit cash (prepayment), or pay with credit card. Credit card payment must be stated at time of purchase.
5. **Packaging** - Seller's price includes the cost of standard packaging, except where Buyer specifies custom nonstandard packaging, at which time the price will reflect the Buyer specified custom nonstandard packaging. The price does not include the cost of returnable containers, if used. Buyer is responsible for the return of such containers including freight charges. Containers are to be returned within three (3) months from date of shipment. Buyer will be billed for and hereby accepts responsibility for the replacement cost of all returnable containers not returned to Eminess Technologies, Inc. within the specified time.
6. **Shipping Terms** - All shipments shall be made Ex-Works Seller's manufacturing plant. Buyer should state explicitly the method of shipment. If Buyer requires the carrier "United Parcel Service (UPS)", Buyer must supply their specified UPS account number to ship collect.
7. **Title And Risk Of Loss** - Notwithstanding the granting of any allowance for shipping, risk of loss and title for products will pass to the Buyer when delivered to the common and/or contract carrier at Seller's plant.
8. **Delays Or Default In Delivery** - Seller shall have no liability to Buyer for Seller's delay or default in delivery due to acts of God, strikes, secondary boycotts, riots, wars, accidents, fires, floods, explosions, vandalism, shortages of labor, fuel materials, supplies, transportation facilities or tooling capacity or other similar or dissimilar causes beyond the reasonable control of Seller. If it is impracticable for Seller to supply the total demand for the material because of such an event, Seller may allocate its available supply of material among itself and its customers in a manner it determines, at its sole discretion, to be equitable. During such an allocation, Seller will not be obligated to purchase material from other sources to satisfy its obligations under this Agreement.
9. **Patent Indemnity**
  - A. Seller shall hold and save Buyer harmless from loss and/or liability of any nature or kind arising out of or existing because of the infringement or alleged infringement of any patent for or on account of the manufacture or sale of any goods furnished hereunder (except in the case when compliance by Seller with specifications prescribed by or originating with Buyer or the use of Buyer's tooling constitutes the basis of the infringement or alleged infringement) if Buyer shall notify Seller in writing of any suit filed against it in account of any such infringement or alleged infringement, and at Seller's request gives Seller control of the defense of such suite, insofar as Buyer has the authority to do so, and information and assistance for the same. Buyer and any other party against whom suit is brought may be represented by their own counsel in any such suit.
  - B. Buyer shall defend, at its own expense, any suit brought against Seller for the infringement or alleged infringement of any patent for or on account of the manufacturer or sale of any goods furnished hereunder, and

shall pay all damages and costs awarded therein against Seller in any case where compliance by Seller with specifications prescribed by or originating with Buyer or the use of Buyer's tooling constitutes the basis of infringement or alleged infringement.

Seller's total liability under this provision shall be limited to the purchase price of the material delivered, and Buyer's remedies are limited solely to the options set forth in this paragraph. Seller shall have no other or further liability to Buyer for patent infringement, and except as expressly stated in this paragraph, Seller makes no warranties, express or implied, pertaining to claims of patent infringement.

10. **Warranty** - Seller warrants compliance with Seller's specifications, drawings, samples, product literature or other information provided by Seller to Buyer; however, Seller's liability shall be limited to the price paid for any product sold to Buyer which fails to conform to this warranty. SELLER DISCLAIMS ALL OTHER OBLIGATIONS AND/OR WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE GOODS AND/OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. In no event shall Seller be responsible for consequential damages, attorneys' fees or any other direct or indirect cost arising from any claim relating to this Agreement.
11. **Inspection** - Promptly upon receipt of all materials delivered under this contract, Buyer shall inspect such materials for any damage, defect or shortage. All claims for shortage or non-delivery and any claims for damage or defect which would reasonably be discoverable in the course of such investigation and/or inspection shall be waived unless Buyer notifies Seller in writing within thirty (30) days after receiving the materials to which the claim relates.
12. **Cancellations and Alterations** - If a full or partial order cancellation is requested with less than 21 business days notice, the customer is responsible for full payment of the order. If an order cancellation is requested at any time for non-standard material that has been specially ordered or manufactured for a specific Buyer, the Buyer is responsible for full payment of the order. The Buyer may postpone the ship date for an order up to a maximum of 30 days provided the Buyer makes the request 21 business days or more from the original ship date. The Buyer is responsible for accepting the shipment at that time. If the Buyer requests an increase in the quantity of an order, this may result in additional lead-time for the order.
13. **Refusal of Shipment** - For shipments that have not been properly processed with a request of a Return Authorization number by the Buyer from the Seller, a 10% refusal charge (of total order) will be added to the shipment. The Buyer is responsible for all shipping charges to Buyer's location and return to Seller for refusal shipments. Seller can hold refused shipment upon receipt for 30 days and re-ship to Buyer's location at the cost of a 30% holding fee. If Buyer refuses shipment and will not accept re-shipment after 30 days, Buyer is responsible for full payment, including any freight cost. (See section III)
14. **Returns** - No product shall be returned to Seller for credit, whether for inspection, repair, replacement, or any other reason, without prior written authorization from Seller. Buyer must request a Return Authorization number from Seller for Seller to accept return of product (Subject to restocking fee of 35%).
15. **Governing law** - This Agreement between the parties evidenced hereby shall be deemed to be made in the State of Arizona and shall in all respects be construed and governed by the laws of that state.
16. **Arbitration of Disputes** - Any controversy or claim arising out of this contract or the breach thereof may at Seller's option, be referred to non-binding mediation under rules of Seller's choice. If mediation does not result in settlement of the dispute, or if Seller does not elect to pursue mediation, Seller shall have the right to refer the dispute to binding arbitration under the rules of its choice, or to commence litigation.
17. **Miscellaneous:**
  - A. This agreement may be performed and all rights hereunder against Buyer may be enforced, wholly or in part, by Seller or by any one or more of the corporations now or hereafter subsidiary to or affiliated with Seller.
  - B. The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition, or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision. Buyer shall not assign its rights or obligations under this agreement without the prior written consent of Seller.
  - C. Stenographic and clerical errors, whether mathematical computations or otherwise, made by seller on this agreement or any other forms delivered to buyer shall be subject to correction.