

EMINESS TECHNOLOGIES, INC. ("SELLER")
TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE APPLY TO EVERY QUOTE AND/OR ORDER CONFIRMATION PROVIDED TO BUYER FROM SELLER AND/OR PURCHASE ORDER RECEIVED BY SELLER FROM BUYER. EACH QUOTE, ORDER CONFIRMATION AND/OR PURCHASE ORDER SHALL BE DEEMED TO INCORPORATE ALL OF THESE TERMS AND CONDITIONS OF SALE BY REFERENCE. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY QUOTE, ORDER CONFIRMATION, PURCHASE ORDER, SHIPMENT ACCEPTANCE, INVOICE, PAYMENT OR OTHER SIMILAR DOCUMENTS, WHETHER DELIVERED BY BUYER OR SELLER, ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS TO THESE TERMS AND CONDITIONS OF SALE AND SELLER HEREBY EXPRESSLY OBJECTS TO AND REJECTS SUCH ADDITIONAL OR DIFFERENT TERMS. SELLER'S TERMS AND CONDITIONS OF SALE SUPERCEDE ANY CONTRADICTIONS IN THE ABOVE DOCUMENTS PROVIDED BY BUYER.

1. **Quotes** - Except when a quote expressly provides otherwise, written quotes by Seller shall expire automatically thirty (30) days after the date appearing on the quote unless withdrawn sooner.
2. **Purchase Orders And Order Confirmation** – Buyer shall from time to time submit to Seller purchase orders for products. Purchase orders shall specify, among other things, the quantity and type of products ordered and the proposed delivery date. Seller shall submit to Buyer an order confirmation. Each purchase order shall be binding on Buyer upon submission of the order confirmation.
3. **Prices** - The prices stated in the order confirmation are for the quantity of products and delivery date specified in the order confirmation. The prices are exclusive of all federal, state, local and, to the extent applicable, foreign, taxes, levies and assessments ("Taxes"). Buyer shall be responsible for the payment of, and shall indemnify and hold harmless Seller for, all Taxes imposed on the products supplied to Buyer, excluding Taxes based on Seller's possession of the products prior to the shipment date and Taxes on Seller's net income. Such Taxes shall be included in the applicable invoice unless Buyer provides Seller with documentation required by Seller to allow Seller to refrain from Tax collections.
4. **Payment Terms** - Buyers of satisfactory credit shall pay all amounts invoiced net 30 days from invoice date, unless alternate terms have been expressly approved and documented by Seller. Acceptance of a purchase order from a first time Buyer is subject to acceptance by Seller of a completed credit application, or remittance of cash, check or bank wire transfer or payment by credit card.
5. **Packaging** – The price includes the cost of standard packaging. Where Buyer specifies custom nonstandard packaging, the price will be modified to reflect the Buyer specified custom nonstandard packaging.
6. **Shipping Terms** - All shipments shall be made FCA Seller's dock, unless otherwise specified on the individual order acknowledgement. The purchase order shall state explicitly the method of shipment. If Buyer requires a specific carrier, such as "United Parcel Service (UPS)", then the Buyer must supply its own specified UPS account number to ship collect.
7. **Title And Risk Of Loss** - Notwithstanding the granting of any allowance for shipping, the risk of loss and title for products shall pass to Buyer upon delivery to the common and/or contract carrier at Seller's dock (FCA Incoterms 2010). All products shall be deemed delivered and subject to Buyer's domination and control when placed in the possession of the carrier.
8. **Delivery** - Seller shall use commercially reasonable efforts to ship the product to Buyer on or before the shipment date specified in the order acknowledgement. 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 of the product because of such an event, Seller may allocate its available supply of the product 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 product from other sources to satisfy the product set forth in the purchase order.

9. **Inspection And Acceptance** - Promptly upon receipt of all products delivered under a purchaser order, Buyer shall inspect such products for any damage, shortage or nonconformity to specifications. All claims for shortage or non-delivery and any claims for damage or nonconformity to specifications that would reasonably be discoverable in the course of such investigation and/or inspection shall be waived unless Buyer notifies Seller in writing within 30 days after receiving the product to which the claim relates. If Buyer timely delivers a claim to Seller of damage or nonconformity to specifications by obtaining a Return Authorization as set forth in paragraph 12, Buyer shall promptly make available to Seller for examination, at the expense of Seller, the rejected products. Within 45 days after Seller has examined the rejected products and has determined, in its sole discretion, that such products are damaged or nonconforming, Seller shall deliver, at Seller's expense, products to Buyer that replace the rejected products.
10. **Cancellations And Alterations** - If a full or partial order cancellation is requested for product within less than manufacturing leadtime, Buyer is responsible for full payment of the order. 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, and provided further that Buyer must accept the shipment at that time. If Buyer requests an increase in the quantity of an order, Seller may delay the ship date of the order.
11. **Refusal Of Shipment** - A refusal charge of 10% of the price will be added to the invoice if Buyer refuses a shipment without obtaining a Return Authorization number as described in paragraph 12. Buyer is responsible for all shipping charges to Buyer's location and return to Seller's manufacturing plant for refused shipments. Seller can hold refused shipment upon receipt for 30 days and, thereafter, re-ship to Buyer, in which case, Buyer must pay a holding fee of 30% of the price. If Buyer refuses shipment and will not accept re-shipment after 30 days, Buyer is responsible for full payment of the order, including any and all shipping charges.
12. **Returns** - No product shall be returned to Seller, 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. Buyer may be charged a restocking fee of 35% of the price for any conforming product returned with a Return Authorization number and is responsible for all shipping charges and risk of loss related to returning product to Seller.
13. **Warranty** - Seller warrants that the products will conform to Seller's specifications, drawings, samples, product literature or other information provided by Seller to Buyer. Except for the warranty set forth in this paragraph 13 and subject to the indemnification obligations set forth in paragraph 16, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, REGULATORY COMPLIANCE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOMER OF TRADE.
14. **Remedies** - THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR ANY BREACH OF THE WARRANTY DESCRIBED IN PARAGRAPH 13 OR THESE TERMS AND CONDITIONS OF SALE BY SELLER RELATING TO THE PRODUCTS SHALL BE REPLACEMENT OF THE PRODUCTS AS DESCRIBED IN PARAGRAPH 9.
15. **Limitation of Liability** - IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. SELLER'S LIABILITY ON ACCOUNT OF A BREACH OF THE WARRANTY SET FORTH IN PARAGRAPH 13 OR ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS OF SALE SHALL BE LIMITED EXCLUSIVELY TO THE PRICE PAID FOR ANY PRODUCT SOLD TO BUYER DURING THE 12 MONTHS IMMEDIATELY PRECEDING SUCH BREACH.
16. **Indemnity** -
 - A. Buyer shall indemnify, protect, defend and hold harmless Seller, its affiliates, shareholders, directors, officers, employees, agents and other representatives (each an "Indemnified Party") from any and all liability, damages, costs and expenses, including reasonable attorneys' fees, litigation expenses and court costs ("Claims"), resulting from or in any way relating to: (a) the possession or use of any equipment manufactured by Buyer containing a product purchased from Seller; (b) the death of or bodily injury to any person or damage

to any property arising from the use of the product purchased by Buyer from Seller; (c) infringement of any third party intellectual property rights with respect to any product provided by Seller to Buyer to the extent such infringement is the result of adherence to the specifications prescribed by or originating with Buyer or the use of Buyer's tooling; (d) any breach of Buyer's representations, warranties, covenants or obligations under these terms and conditions of sale; or (e) the negligence, misconduct or violation of law by Buyer in the performance of, or Buyer's failure to perform, its obligations under these terms and conditions of sale; unless such Claims have been finally determined by a court of competent jurisdiction to have been caused by (i) Seller's failure to deliver the products in accordance with the warranties provided herein; (ii) an Indemnified Party's gross negligence or willful misconduct; or (iii) infringement of any third party intellectual property rights with respect to any product provided by Seller to Buyer that is not described in subsection (c) above.

B. Buyer shall notify Seller in writing of any suit filed against it for which Buyer seeks indemnification and at Seller's request give Seller control of the defense of such suit. Buyer and any other party against whom suit is brought may be represented by their own counsel in any such suit.

C. Seller's total liability under this provision shall be limited to the purchase price of the product 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.

17. **Governing Law** – These terms and conditions of sale shall be deemed to be made in the State of Arizona, United States of America and shall in all respects be exclusively construed and governed by the laws of the State of Arizona, without regard to any states statutes and rules regarding conflict of law.

18. **Dispute Resolution** - Any controversy or claim arising out of these terms and conditions of sale or the breach hereof may, at Seller's option, be referred to non-binding mediation under rules of Seller's choice. Any dispute hereunder shall be brought exclusively in the state or federal courts located in Maricopa County, Arizona, USA and the parties expressly agree to the exclusive jurisdiction and venue of such courts.

19. **Miscellaneous:**

A. These terms and conditions of sale may be performed and all rights hereunder of Seller may be enforced, wholly or in part, by Seller or by any one or more of the entities 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.

C. Buyer shall not assign its rights or obligations under these terms and conditions of sale without the prior written consent of Seller.

D. Stenographic and clerical errors, whether mathematical computations or otherwise, made by Seller herein or in any other forms delivered to Buyer shall be subject to correction by Seller in its sole discretion.

E. These terms and conditions of sale constitute the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements or understandings of the parties with respect to the subject matter hereof and any conflicting terms set forth in Buyer's Documents. These terms and conditions of sale shall not be modified or amended except in a writing signed by both parties.

F. These terms and conditions of sale shall be interpreted as if written and negotiated jointly by the parties and shall not be strictly construed against either party, regardless of the actual drafter. If any provision of these terms and conditions of sale shall prove to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidation, but shall not invalidate the remainder of such provision or the remaining provisions of these terms and conditions of sale.