



**PYRAMID SOLUTIONS**

**STANDARD TERMS AND CONDITIONS OF SALE**

Sales under these terms and conditions (these "Terms") are by Pyramid Solutions, Inc., a Michigan corporation, ("Pyramid") to the person named as the buyer or purchaser in the documentation to which these Terms are attached or with which they are associated, or, if these Terms are shipped with one or more products, the person to whom they are shipped (in any case, "Buyer") and all sale transactions between Pyramid and Buyer are conditional on Buyer's assent to these Terms. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Pyramid, these Terms are in lieu of any terms later submitted by Buyer and Pyramid rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Pyramid tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Pyramid's acceptance of any offer by Buyer associated with Buyer's terms is expressly conditioned upon Buyer's acceptance of these Terms exclusively, including, but not limited to, any provisions of these Terms that are additional to, or different from, terms contained in the terms tendered by Buyer. Buyer's performance, or acceptance of, or payment for, any products from Pyramid, will constitute Buyer's acceptance of these Terms. These Terms, together with any associated description of the products that are the subject of the purchase and sale transaction under these Terms (whether given telephonically, by other electronic means, or otherwise) constitute an "Order." Buyer represents and warrants that any products it purchases from Pyramid are for business or commercial use and not for domestic, personal, family, or household use.

1. **PRICES & MINIMUM ORDER QUANTITIES:** The prices of the products supplied by Pyramid are as stated in the Order. Prices may be adjusted to the prices in effect at the time of delivery. All pricing is FOB (as described in UCC Sec. 2-319) Pyramid's dock for shipments within the United States and Ex Works (Incoterms 2000) Pyramid's dock for international shipments. Buyer acknowledges that the prices for certain products offered by Pyramid are based on Buyer purchasing a minimum quantity of those products. Where Buyer orders a product that is subject to a minimum order quantity and the quantity ordered does not meet that minimum order quantity, Pyramid reserves the right to adjust the price or ship the minimum order quantity at its discretion.
2. **PAYMENT:** Unless otherwise expressly agreed in writing by Pyramid, Buyer will pay any invoice issued by Pyramid in U.S. Dollars. No discounts are authorized. Pyramid may, at its sole discretion, require payment by bank transfer, cash, certified check, C.O.D., or credit card. All trading accounts are subject to prior approval of Pyramid's credit department, in accordance with Pyramid's credit policies and practices in effect from time to time. The amount of credit or terms of payment may be changed by Pyramid at any time for any reason. If Buyer fails to make payment when due or defaults in any other way, Pyramid may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer's account is current: (1) withdraw credit and suspend or cancel performance under any or all Orders; and/or (2) reschedule shipment. Each shipment will be separately invoiced and paid for without regard to other shipments.
3. **TAXES:** All prices are exclusive of sales, use, excise, customs, export, import, commodity or any other taxes. Buyer will pay all such taxes and any licence fees or other charges incidental to the sale of products. Buyer will, at Pyramid's request, provide to Pyramid reasonable proof of payment by Buyer of such taxes, fees, and assessments. If Pyramid is required to prepay any taxes on behalf of Buyer, Buyer will reimburse Pyramid for all such taxes paid.
4. **SHIPMENTS:** All shipments will be made in accordance with the delivery terms designated in the relevant Order or, if no delivery terms are expressed, FOB (as described in UCC Sec. 2-319) Pyramid's dock for shipments within the United States and Ex Works (Incoterms 2000) Pyramid's dock for international shipments. Any claims against Pyramid for shortages or non-conformance that could, with due diligence, be discovered by inspection upon receipt, must be made within 10 days after receipt. Prices include packaging in accordance with Pyramid's standard practice. Pyramid may make deliveries in installments with appropriate partial invoicing issued for each such installment. Any shipping date or delivery date stated represents Pyramid's best estimate of when the products will be shipped or delivered. Pyramid is not liable for losses or added costs due to delivery delays. Each shipment of products to be delivered is to be considered a separate sale and Buyer will pay the agreed price for each shipment without regard for any failure to deliver any subsequent shipment of such products. Pyramid's breach or default in the delivery of any shipment will not give Buyer the right to refuse to receive any other shipment. Any back-ordered products will be considered a separate shipment. Any failure by Buyer to pay for any shipment within the time for payment is an anticipatory material breach with regard to other shipments.
5. **FORCE MAJEURE:** Pyramid will not be liable for failure to deliver, or for delay in delivery of, the products arising out of causes beyond its reasonable control, including acts of God or of the public enemy, acts of any Governmental authority, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, labor disputes or shortages of labour, freight embargoes, or inability to secure necessary parts and materials. In no event will Pyramid be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery.
6. **CANCELLATION/RESCHEDULING**
  - A. **TERMINATION FOR DEFAULT:** Either party may terminate an Order by written notice, without prejudice to its other rights or remedies if: (1) the other party files a petition in bankruptcy or assignment for the benefit of creditors, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a manager or receiver appointed over any of its assets; (2) the other party defaults under these Terms and does not remedy the default within 30 days (10 days in the case of payment defaults) following written notice requiring the breach to be remedied.
  - B. **TERMINATION FOR CONVENIENCE:** At Pyramid's sole discretion, Orders may be cancelled on receipt of written request from Buyer requesting cancellation, except that Orders or Order line items for products designated non-cancellable or non-returnable ("NCNR" or other designation to that effect), or for custom products cannot be cancelled under any circumstances. Buyer will accept delivery and pay 100% of the purchase price of such Order line item(s).
  - C. **ADEQUATE ASSURANCE OF PERFORMANCE:** In any circumstance where Pyramid has the right to demand adequate assurance of Buyer's performance (such as under Section 2-609 of the Uniform Commercial Code, where applicable), Buyer will provide such assurance within five days after demand by Pyramid.
7. **PRODUCT CHANGES:** Pyramid may, at any time and without notice to Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect.
8. **TECHNICAL ASSISTANCE:** Pyramid will not be liable in any respect to provide technical advice, facilities or service in connection with any Order or the products supplied. Any such assistance must be the subject of a separate written agreement.
9. **RISK, TITLE AND SECURITY INTEREST:** Risk of damage to or loss of any products supplied by Pyramid will pass to Buyer at the time specified in the Order or, if not specified, FOB (as described in UCC Sec. 2-319) Pyramid's dock for shipments within the United States and Ex Works (Incoterms 2000) Pyramid's dock for international shipments. No delivery terms other than FOB Pyramid's dock or Ex Works Pyramid's dock will apply unless Pyramid has separately acknowledged in writing any such delivery term. Unless otherwise specified by Pyramid in an order, title to any products supplied by Pyramid will pass to Buyer at the same time as risk passes in accordance with the preceding portion of this Section 9. Buyer grants to Pyramid a security interest in the products supplied under these Terms and any proceeds thereof and accessions thereto as security for Buyer's obligations (payment and otherwise) to Pyramid. Pyramid may register and/or file a financing statement in the Personal Property Securities Register or other appropriate repository of records to perfect its security interest in the products in accordance with the Personal Property Securities Act 1999, the Uniform Commercial Code, or other applicable law.
10. **WARRANTY:** Pyramid warrants solely to Buyer that each product supplied under these Terms will, until the date that is 12 months after shipment by Pyramid to Buyer (the "Warranty Period"), conform to Pyramid's written specifications. Pyramid's sole and exclusive obligation, and Buyer's sole remedy for failure of any product to conform to the above warranty, is, at the option of Pyramid, that Pyramid will repair or replace the non-conforming product or refund to Buyer the monies paid by Buyer for the non-conforming product. Buyer must notify Pyramid of any nonconformity during the Warranty Period. In the case of replacement of a non-conforming product, the Warranty Period will be tolled beginning on the date upon which Pyramid receives the non-conforming product and will begin to run again when Buyer receives the repaired or replacement product. The warranty will not apply if the product: (1) fails, malfunctions or is damaged as a result of handling, installation, maintenance, removal, modification or repair other than as specified in Pyramid's then-current user manual or similar documentation; (2) suffers a casualty or is subjected to abuse (including electrostatic discharge) or improper use; (3) is altered or damaged so that Pyramid is unable to verify the defect with its normal test equipment; or (4) is not returned in the same or equivalent container in which it was shipped.
11. **PRODUCT RETURNS:** Pyramid will have no obligation to accept any return unless Pyramid has approved in writing the return. All return documentation must contain Pyramid's Returned Materials Authorization ("RMA") number. Pyramid may refuse returned shipments not approved by Pyramid or not properly identified. The request for return approval must include serial number, part number, lot number, and date code (each as applicable), and full identification of products to be returned. Proper handling procedures must be used in the packing and shipping of all returns. Products must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the



package. Buyer retains title and assumes all risk of loss relating to products returned for repair.

12. **DISCLAIMERS AND LIMITATION OF LIABILITY: EXCEPT AS EXPRESSLY WARRANTED IN SECTION 10, THE PRODUCTS ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. PYRAMID MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND PYRAMID EXPRESSLY DISCLAIMS ALL WARRANTIES AS TO THEIR QUALITY, PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S REMEDIES ARE EXPRESSLY LIMITED TO THE EXCLUSIVE REMEDIES STATED IN THESE TERMS. NEITHER PYRAMID NOR ANY DIRECT OR INDIRECT SUPPLIER TO PYRAMID WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING OUT OF, RELATED TO, OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR TRANSFER OF ANY PRODUCT BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER OF ANY PRODUCT, BY THE PERFORMANCE OR FAILURE TO PERFORM OF PYRAMID OR ANY DIRECT OR INDIRECT SUPPLIER TO PYRAMID UNDER THESE TERMS OR IN ANY OTHER RESPECT, BY ANY OTHER ACT OR OMISSION OF PYRAMID OR ANY DIRECT OR INDIRECT SUPPLIER TO PYRAMID, OR BY ANY OTHER CAUSE. IN NO EVENT WILL PYRAMID'S OR ITS SUPPLIERS' TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO PYRAMID BY BUYER FOR THE PRODUCT(S) GIVING RISE TO THE LIABILITY. THESE LIMITATIONS APPLY REGARDLESS OF WHETHER PYRAMID OR ITS SUPPLIER(S) IS (ARE) OR WAS (WERE) AWARE OF THE POSSIBILITY OF ANY PARTICULAR DAMAGES AND REGARDLESS OF WHETHER ANY LIMITATION CAUSES A REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.**

**NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION.**

13. **INDEMNIFICATION:** Buyer shall indemnify, defend, and hold harmless Pyramid and its managers, directors, officers, employees, agents, affiliates, successors, and assigns from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees) whatsoever that are incurred by or made against any indemnitee and that arise out of, or are related to: (i) any act, omission, negligence, or misconduct of Buyer; (ii) any breach of these Terms or any Order by Buyer; or (iii) any claim by Buyer, any customer of Buyer, any successor holder of any of the products, or any other person, related to the products or the purchase, installation, or use of such products, or any undertakings, acts, or omissions relating to such products, to the extent such claim is not based upon a product defect proven to have been caused solely by Pyramid's gross negligence.

14. **FAIL-SAFE OR CRITICAL OPERATIONS:** Pyramid's products are not designed, intended, authorized, or warranted to be suitable for use or resale as control equipment in, or for other applications related to, hazardous or potentially-hazardous environments or applications requiring high-availability or fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, public works, weapons systems, or any other application in which the failure of a product could lead to property damage, death, personal injury, or environmental damage. Buyer will not use, or permit to be used, the products for such high-availability, fail-safe, or critical applications and further agrees to indemnify, defend, and hold harmless Pyramid and its managers, directors, officers, employees, agents, affiliates, successors, and assigns from and against any action, suit, proceeding, cost, expense, damages, and liability (including, but not limited to, reasonable attorneys' fees) arising out of, or related to, the breach of Buyer's obligations in this Section 14.

15. **SOFTWARE OWNERSHIP AND LICENCE:** If any product supplied by Pyramid contains software, firmware, or databases ("Licensed Software"), then the following terms will apply.

**A. SEPARATE AGREEMENT:** Where Pyramid and Buyer have entered into a separate agreement providing for licenses for software, firmware, or databases, that agreement will govern the Licensed Software to the extent covered by the terms of that agreement.

**B. NO SEPARATE AGREEMENT:** Where, and to the extent that, Pyramid and Buyer have not entered into a separate agreement providing for licenses for software, firmware, or databases associated with the products. The following terms will apply. As between Pyramid and Buyer or Buyer's permitted assignees

and transferees, except as otherwise expressly stated in these Terms, Pyramid will retain ownership of all intellectual property rights in the Licensed Software. Buyer acknowledges that it is granted a perpetual, non-exclusive, non-transferable (except in connection with transfer of the physical product upon which the Licensed Software resides as permitted by these Terms) licence to load, run, and store the Licensed Software in machine-readable form only for Buyer's or a successor purchaser's internal use and only for use with the product (the "Intended Use"). Buyer will strictly adhere to the Intended Use of the Licensed Software and will not translate, adapt, arrange, reverse compile or otherwise alter or perform error corrections, nor disclose, sell, assign, rent, lend, sub-license, or otherwise transfer the Licensed Software. Buyer may transfer such license, but only in connection with the sale of a product upon which such Licensed Software is installed and Buyer may not continue to use or operate any Licensed Software after the specific product with which the Licensed Software is associated has been transferred. Nothing in these Terms will be interpreted as conveying or granting a licence to Buyer of any Licensed Software in source code form. Any licence of software in source code form will be covered by a separate agreement, if at all.

16. **CONFIDENTIALITY:** Buyer will, notwithstanding that any Order may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Pyramid that is marked confidential or by its nature ought to be considered confidential, including business plans, technological techniques, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) was readily ascertainable by proper means by the public at the time at which it was disclosed or later becomes so, in either case without breach of these Terms by Buyer or any agent of Buyer; (ii) is disclosed with the prior written approval of Pyramid; or (iii) becomes known to Buyer from a source other than Pyramid without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality.

17. **EXPORT CONTROLS:** Unless an appropriate license, exemption or similar authorization has been duly obtained, Buyer shall not, nor shall Buyer authorize or permit its employees, agents, successors or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, these commodities, technology and/or software will be/were exported from the United States or other country of origin in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited. Buyer agrees to indemnify and hold harmless Pyramid from and against any and all claims, losses, expenses, suits, damages, costs, penalties and/or fines, including, but not limited to, attorneys' fees, known or unknown, arising from Buyer's acts or omissions under these Terms or any Order, including Buyer's breach of the terms set forth herein governing export or re-export activities.

18. **GOVERNING LAW; JURISDICTION; VENUE; SEVERABILITY:** These Terms will be governed by and construed in accordance with the laws of the State of Michigan and the federal laws of the United States. The United Nations Convention On Contracts For the International Sale Of Goods will not apply to these Terms or any Order. Any action or claim arising out of or related these Terms or any Order may be brought only in the state courts of Michigan sitting in Oakland County, Michigan or in the United States District Court for the Eastern District of Michigan – Southern Division and Buyer irrevocably consents to the exclusive jurisdiction of, and venue in, such courts. Notwithstanding the foregoing, Pyramid may apply to any court of competent jurisdiction for injunction, restraining order, or other equitable relief. If any provision of these Terms is illegal or unenforceable, the remaining provisions will continue in full force and effect.

19. **ASSIGNMENT:** No rights or obligations under these Terms may be assigned by Buyer without the prior written consent of Pyramid. Pyramid may freely assign its rights and obligations under these Terms or any Order.

20. **REMEDIES CUMULATIVE:** All remedies of Pyramid are cumulative. No pursuit by Pyramid of any particular remedy will be deemed an exclusive election of such remedy.

21. **ENTIRE AGREEMENT:** These Terms, together with any additional terms contained in an Order, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to such subject matter. These Terms cannot be modified, except in writing and signed by the party against whom enforcement is sought.