



WJ Communications, Inc.

GENERAL TERMS AND CONDITIONS OF SALE ELECTRONICS GROUP PRODUCTS AND SERVICES

1. LIMITS OF AGREEMENT

The terms and conditions set forth herein, together with those appearing on the face hereof, referenced herein or attached hereto, shall constitute the complete and exclusive statement of all of the terms of the agreement (hereafter referred to as "Contract") between WJ Communications, Inc. (hereafter referred to as "Seller") and Buyer unless different, contradictory, or additional terms and conditions are subsequently agreed to by both parties in writing. All prior representations of the parties are merged herein. Buyer may not enforce against Seller any affirmation, representation, promise, or warranty concerning the goods or services covered by the Contract unless contained herein. The Contract shall not be varied, supplemented, qualified, or interpreted by any prior course of dealing between the parties or by any usage of trade.

2. DELIVERY TERMS

In the absence of written agreement to the contrary, the means of shipment shall be at the discretion of Seller. Buyer will pay all costs of shipment. For shipments within the United States, risk of loss and title shall pass to Buyer on delivery to the carrier at Seller's facility. For shipments outside the United States, risk of loss and title shall pass to Buyer at the destination point of entry (airport, port of call) before customs in accordance with the latest published Incoterms. Notwithstanding where title passes, Buyer will pay or reimburse Seller for all costs of transportation, insurance, value added tax, and import duty if imposed.

3. PAYMENT TERMS

All payments shall be paid in United States dollars. Payment terms are net, thirty (30) days, after the date of Seller's invoice, unless Seller notifies Buyer that payment terms will be otherwise. Such payment terms may include but are not limited to payment in advance or irrevocable letter of credit confirmed for the full amount of the purchase price by a United States bank of Seller's choice. All costs associated with the issuance and administration of the letter of credit shall be borne by Buyer. Seller reserves the right at any time to suspend credit or to change credit terms provided herein when in its sole opinion the financial condition of Buyer so warrants. In such case, in addition to any other remedies herein or provided by law, cash payment or satisfactory security from Buyer may be required by Seller before shipment, and the due date of payment by Buyer under any Contract or order with Seller may be accelerated by Seller. Failure to pay invoices when due may, at Seller's option, make all subsequent invoices immediately due and payable, irrespective of terms, and Seller may withhold all subsequent deliveries until the full account is settled.

4. TAXES

Unless separately stated, all prices will be quoted, all orders accepted, and all billings rendered exclusive of all federal, state, municipal, and foreign taxes of any kind. Seller will not report, collect, or pay any tax, which may be imposed on Buyer, and Buyer shall report and pay all taxes so imposed and shall hold Seller harmless there from.

5. WARRANTY

Seller warrants for a period of one year from the date of shipment, unless a different period has been agreed upon and incorporated into the Contract, that the products delivered or services rendered will conform to the specifications and be free from defects in workmanship and materials. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHER WARRANTIES OR GUARANTIES OF ANY KIND OR DESCRIPTION, WHETHER STATUTORY, EXPRESS, OR IMPLIED. If the goods delivered or services performed fail to conform to the warranty stated in this clause, Seller will correct the nonconformity at its expense by such repair, adjustment, modification, or replacement of the goods or services, as Seller deems expedient. THE FOREGOING REMEDY OF BUYER FOR ANY FAILURE OF THE GOODS OR SERVICES TO MEET ANY WARRANTY IS EXCLUSIVE. BUYER EXPRESSLY AGREES THAT THE LIABILITY OF SELLER UNDER ANY WARRANTY SHALL NOT INCLUDE DAMAGE TO OR LOSS OF PROPERTY OTHER THAN THE GOODS COVERED BY THE CONTRACT; LOSS OF PROFITS OR REVENUE; INCREASED COSTS OF ANY KIND; CLAIMS OF CUSTOMERS OF BUYER; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. As to goods or components where the customer has funded the repair, Seller will warrant as limited above, the repaired portion of the unit for three months from the date of reshipment.

6. INSPECTIONS AND ACCEPTANCE OF GOODS

Buyer shall properly inspect and test the goods immediately upon their arrival and shall within thirty (30) days after their arrival give written notice to Seller of any claim that the goods do not conform with the terms of the Contract. If Buyer fails to inspect and test the goods and notify Seller as called for above, Buyer will be held to have accepted the goods with all faults that inspection and testing would have revealed and to have waived all rights Buyer may have had to revoke acceptance after said thirty (30) day period.

7. RETURNS

Prior to returning a product for repair, Buyer shall obtain from Seller a Return Material Authorization (RMA) number. When Seller's products are returned for repair, replacement, or other adjustment, no credit allowances, repairs, or replacements will be affected until Seller has confirmed that there is a nonconformance or defect and that it is Seller's responsibility. All tests and inspections performed by Seller will be conducted at any reasonable time and place it designates. All transportation costs and risk of loss of goods returned to Seller are the responsibility of Buyer unless the return has been determined by Seller to be its responsibility. Seller's total liability for returns that are its responsibility is strictly limited to reasonable transportation costs and repair, replacement, or credit at its option. All reasonable costs associated with the return, test, inspection, and reshipment of goods where Seller could not confirm a defect or nonconformance shall be the responsibility of Buyer.

8. CHANGES

Seller will comply with written changes by Buyer to drawings, specifications, or other instructions for work. If such changes or instructions cause an increase or decrease in the cost or time required for the performance of the Contract, an equivalent adjustment should be made in the Contract price and/or delivery schedule by mutual agreement. Seller will request such adjustments within thirty (30) days after receipt of notice of the change, and the Contract shall thereupon be amended as mutually agreed between the parties.

9. CANCELLATIONS

Buyer acknowledges the highly technical and complex nature of Seller's and its affiliates' products, manufacturing processes, and services and the fact that the goods or services herein described have not been previously manufactured or provided by Seller, or if previously manufactured or provided involve manufacturing processes or services which are difficult to duplicate. Buyer further acknowledges that Seller may not be able to manufacture these particular goods or provide the services even after engaging in design, development, engineering, or manufacturing efforts at a cost equal to the price quoted herein. Therefore, Buyer agrees that notwithstanding anything to the contrary herein:

(a) In the event Seller fails to deliver the goods described herein after having engaged in engineering, design, development, or manufacturing activities sufficient for it to determine that it will be unable to deliver hereunder at a cost to Seller equal to the quoted price, whether or not such costs have actually been incurred, Seller shall have the option to terminate the Contract, in which event, Buyer shall be excused from payment of the purchase price of all undelivered items, and Buyer will not be liable to Seller for any termination charges. Seller's determination under this paragraph (a), if reasonably made, shall be conclusive on the parties.

(b) Seller agrees that it will perform its development and manufacturing activities in a reasonable and workmanlike manner which conform to the standards Seller meets when performing said activities for its own account. Such activities shall be conducted according to Seller's judgment regarding the most productive manner to proceed and Seller's judgment reasonably exercised shall be binding on the parties.

(c) If engineering, design, or developmental work, in addition to that contemplated by Seller hereunder, is necessary in order to complete performance and such additional work delays the performance schedule set forth herein, Seller shall be excused from such delay, provided, however, that Seller shall use its best efforts to minimize the delay in performance occasioned thereby.

10. TERMINATION FOR CONVENIENCE

The Contract may at any time be terminated, in whole or in part, by written notice from Buyer. If such termination is for the convenience of Buyer and is not caused by Seller's failure to fulfill the requirements or make progress so as to endanger performance of the Contract, Buyer, deducting any amount(s) previously paid, shall pay a proportional price for all work performed plus a profit on such work plus termination settlement costs. The total amount to be paid by Buyer in the event of convenience termination shall be determined by negotiation, but excluding settlement costs it shall in no event exceed the price of the Contract.

In the event of a convenience termination, Seller shall use its best efforts to reduce costs incurred on terminated work and, to the extent not terminated, shall diligently continue performance of the work not terminated in accordance with the terms of the Contract.

11. EXCUSABLE DELAY OR FAILURE TO PERFORM

Seller will not be liable for failure to perform any obligation under the Contract or for delay in performance of any obligation under the Contract resulting from any cause beyond its reasonable control. Buyer agrees that the following or similar causes, without limitation, are beyond the reasonable control of Seller; any act of God or severe weather condition, including but not limited to earthquake, storm, or flood; any act, delay, failure to act, decree, priority, order, or regulation of any governmental or military authority, including but not limited to quarantine, embargo, condemnation, or delay or failure to issue a license, permit, or authorization; any war, hostility, or invasion; any civil disturbance, riot, or insurrection; any legal proceeding; any accident, disruption, fire, or explosion; any major equipment breakdown; any labor difficulty, whether general, local, or confined to a particular group of employees, including but not limited to strike, lockout, work stoppage, or refusal to cross a picket line or failure to settle any labor difficulty; any sabotage; any transportation difficulty, wreck, accident, or delay; any act, delay, or failure to act of Buyer; any act, delay, or failure to act of Contractor's subcontractors or suppliers of any tier; and any shortage of, disruption of, or inability to obtain labor, material, power, fuel, or transportation from usual sources. Seller shall be entitled to compensation on an equitable basis for benefit received by Buyer in retaining nonconforming or late-delivered goods or utilizing nonconforming services. For supplies which have been delivered and accepted or services which have been performed, Buyer shall pay the Contract price.

If Seller's failure to perform is for reasons other than those listed above, Buyer may terminate the Contract for the undelivered items provided that Seller has ten days (or more if authorized by Buyer) to cure the failure to perform after receipt of the notice from Buyer specifying the failure.

If after termination it is determined that Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER THE ENTIRE TERMS AND CONDITIONS. SELLER SHALL NOT BE LIABLE FOR EXCESS REPROCUREMENT COSTS IN EXCESS OF TWENTY PERCENT OF THE CONTRACT PRICE OF THE UNDELIVERED ITEMS.

12. LIMITATION OF LIABILITY

BUYER EXPRESSLY AGREES THAT, NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, UNDER NO CIRCUMSTANCES SHALL SELLER'S TOTAL AGGREGATE LIABILITY RESULTING:

- (a) FROM THE PERFORMANCE, FAILURE TO PERFORM, OR BREACH OF SELLER'S OBLIGATION HEREIN;
- (b) FROM ANY ACTIVITY UNDERTAKEN BY SELLER WITH RESPECT TO THE GOODS OR SERVICES COVERED BY THE CONTRACT;
- (c) ALL ACTIONS BASED ON NEGLIGENCE OF ANY KIND, STRICT LIABILITY, OR TORT ON THE PART OF SELLER OR ITS SUBCONTRACTORS OR SUPPLIERS OF ANY TIER; AND
- (d) OTHERWISE

EXCEED THE PRICE OF THE CONTRACT. BUYER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN RELATING TO DELAY IN DELIVERY AND WARRANTY ARE EXCLUSIVE AND THAT NEITHER SELLER NOR ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED ON CONTRACT; ON NEGLIGENCE OF ANY KIND; STRICT LIABILITY OR TORT, ON THE PART OF SELLER OR OF ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER, FOR DAMAGE TO OR LOSS OF PROPERTY OR EQUIPMENT OTHER THAN THE GOODS COVERED BY THE CONTRACT; FOR LOSS OF PROFITS OR REVENUE; FOR INCREASED COSTS OF ANY KIND; OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

13. COMMENCEMENT OF ACTIONS

ANY ACTION, WHETHER BASED ON CONTRACT, ON NEGLIGENCE OF ANY KIND, STRICT LIABILITY, OR TORT ON THE PART OF SELLER OR OF ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER OR OTHERWISE, RESULTING FROM THE PERFORMANCE, FAILURE TO PERFORM, OR BREACH OF ANY OBLIGATION OF SELLER UNDER THE CONTRACT, OR FROM ANY ACTIVITY UNDERTAKEN BY SELLER WITH RESPECT TO THE GOODS OR SERVICES COVERED BY THE CONTRACT, MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE DATE OF SELLER'S SHIPMENT OF THE GOODS OR PERFORMANCE OF THE SERVICES.

14. DISPUTES

Any claim or controversy arising out of the performance of the Contract or the breach thereof, may be settled at Seller's sole discretion either by submitting the claim to a court of competent jurisdiction or by binding arbitration in the State of California (Maryland, if applicable) under the commercial rules of the American Arbitration Association. If Seller elects to submit the matter to arbitration, Buyer agrees to have any disputes concerning the scope of arbitral issues resolved by the arbitral tribunal. Judgment upon the award rendered by arbitration may be entered in any court having jurisdiction thereof. For Palo Alto Contracts venue shall be at Palo Alto, CA, for Gaithersburg Contracts venue shall be at Gaithersburg, MD.

15. INSOLVENCY OF BUYER

If Buyer becomes bankrupt or insolvent during the term of the Contract, Seller may forthwith terminate the Contract upon written notice thereof to Buyer. Such termination shall not prejudice Seller's rights to any amounts then due under the Contract.

16. SUBSEQUENT DEFAULT

Seller's failure to insist upon strict performance of any provision of the Contract shall not be deemed to be a waiver of its rights or remedies, or a waiver by it of any subsequent default by Buyer under the Contract.

17. ASSIGNMENT

Buyer may not assign the Contract without prior written consent of Seller.

18. NOTICES

Except for acceptance hereof, any notices required to be given hereunder shall be given in writing at the address of each party herein set forth or at such other address as either party may substitute by notice to the other.

19. PRODUCT SALES

Notwithstanding any Contract clauses to the contrary, Seller reserves the right to sell all products that it manufactures to any customer provided that Seller complies with all state and federal laws.

20. EXPORT CONTROL

Buyer warrants that the goods or services sold to it by Seller are not purchased for re-export outside the country of destination listed on the face of the Contract, unless agreed to by Seller and in no case if prohibited by the laws of the United States.

21. GENERAL RESERVATION OF INTELLECTUAL PROPERTY RIGHTS

Seller conveys no rights in intellectual property (including data) except to the extent expressly provided elsewhere in the Contract. Seller conveys rights in data only if the data are identified and are separately priced.

22. PATENT INDEMNIFICATION

Seller agrees to indemnify Buyer and its customers against liability, including costs, for infringement of any valid United States patent, copyright, or trademark arising out of the purchase of products under the Contract only to the extent that such products are produced to Seller's specifications, drawings, or design and which are not produced in substantial accordance with Buyer's specifications, drawings, or design. Provided, however, that the foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer or Buyer's customer, of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof. Without limiting the generality of the foregoing, such indemnity shall not apply if: (1) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Contract not normally used by Seller; or (2) the infringement results from the addition to, or change in, the supplies furnished, which addition or change was made subsequent to delivery or performance by Seller; or (3) the infringement results from Buyer's or its customers' use of the products manufactured under the Contract in a system patented by a person or persons other than Seller; or (4) the claimed infringement is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction. Buyer agrees to indemnify Seller against liability, including costs, for infringement of any valid United States patent, copyright, or trademark arising out of any activity with respect to products under the Contract for which indemnification by Seller of Buyer is not due under this section.

23. SALE CONVEYS NO LICENSE

Seller's products are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppels or otherwise, under any patent claim with respect to which Seller can grant licenses covering a completed equipment, or any assembly, circuit, combination, method, or process in which any such products are used as components (notwithstanding the fact that such products may have been designed for use in, or may only be useful in; such patented equipment, assembly, circuit, combination, method, or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all its rights under such patent claims.

24. PROGRAM LICENSE

For each program and documentation in connection therewith or any portion thereof (the Licensed Software) delivered to Buyer by Seller for use in systems, products, or apparatus delivered by Seller or owned by Buyer pursuant to the Contract or other governing agreement between Seller and Buyer effective at the time of delivery of the Licensed Software, Seller grants to Buyer a personal nonexclusive, fully paid-up license to use Licensed Software in and only in such systems, products, and apparatus for a license term which is the full life of such systems, products, and apparatus and Buyer agrees to be bound by the following terms and conditions:

(a) 1) Buyer will not disclose the Licensed Software to any third party, unless the Licensed Software has been made public by or with the written consent of Seller:

2) Buyer will not duplicate the Licensed Software or any part thereof in any manner except:

(i) Buyer may maintain backup copies of the Licensed Software for replacement of a worn or damaged copy, for archive purposes, or for purposes of program justification, provided such copies are limited to use with the equipment for which the Licensed Software was sold; and

(ii) nothing herein shall be deemed to exclude duplication of anything covered by an expired copyright, patent, or other statutory form of protection.

3) Buyer will not assign the license to use the Licensed Software except to a subsequent Buyer of the system, product, or apparatus for which the software is delivered pursuant to the Contract or other governing agreement between Seller and Buyer effective at the time of delivery of the Licensed Software, and then only if the subsequent Buyer agrees in writing to be bound by all the terms and conditions of the license.

4) Buyer will not reverse assembly, reverse compile, or otherwise translate the Licensed Software.

(b) Subject to the license, Seller reserves all rights to make public, to publish, to copy, to sell, to license, and to execute (perform) the Licensed Software throughout the world and to all rights presently obtained or hereafter obtained in the nature of copyright, patent, or other form of protection throughout the world covering the Licensed Software.

(c) Buyer agrees that it shall hold the Licensed Software in confidence for Seller. Buyer further agrees that it shall not make any disclosure of the Licensed Software, or any portion thereof (including method or concepts utilized), to anyone except to a subsequent Buyer who becomes bound by the terms of the license as hereinabove provided, and to employees of Buyer to whom such disclosure is necessary for the use for which rights are granted hereunder. Buyer shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by the employee.

Nothing herein grants to Buyer the right to sell, lease, or otherwise transfer or dispose of the Licensed Software, in whole or in part, other than to a subsequent Buyer who agrees to become bound by all the terms of the license.

25. OFFICIAL LANGUAGE

The official language of the Contract shall be the American English Language.

26. CHOICE OF LAW

The Contract shall be interpreted and the rights of the parties determined by the laws of the State of California.

The following clauses apply if this is a government contract:

27. AUDIT

Any audit of Seller's proprietary financial/accounting records may be performed only by a United States Government Audit Agency or a mutually agreeable independent public accounting firm paid for by Buyer.

28. INDEMNIFICATION

With regard to any indemnification for defective pricing or Cost Accounting Standards (CAS) violations, Seller shall not be liable for any burden, profit, or other costs added or assessed by Buyer or successive higher tier contractors. In addition, Seller shall not be liable for any failure of Buyer to provide to its customer any data supplied by Seller or for any defective pricing resulting from failure of Buyer to request an update of previously submitted cost or pricing data, notwithstanding any Contract clauses to the contrary.

29. GOVERNMENT CLAUSES

Any Government clauses that are to be flowed down to Seller, will be subject to review and approval by Seller prior to incorporation into the Contract. Notwithstanding any Contract clause to the contrary, any Government clause accepted by Seller will be subject, at a minimum, to the same limitations as previously specified in these General Terms and Conditions of Sale.