

TERMS AND CONDITIONS OF SALE

WEN TECHNOLOGY INC.

These Terms and Conditions of Sale are applicable to all quotations, orders and shipments.

1. **DEFINITIONS:** As used herein, the term "order" means the purchase order or other document placing an order for goods, to which this quotation acknowledgment or sales agreement relates. The term "goods" means the products, materials, or services which are the subject hereof. The term "quotation" means the description of the goods proposed to be supplied to Purchaser including the price and the terms and conditions under which such goods will be provided.

2. **ACCEPTANCE AND AGREEMENT:** The provisions on the face hereof and these Terms and Conditions of Sale constitute the entire agreement between Wen Technology and Purchaser and supersede all prior or contemporaneous communications between the parties whether written or oral. No purported modification or waiver of the provisions hereof shall be binding on Wen Technology for any purpose unless contained in writing signed by an officer of Wen Technology. In the event Purchaser's acknowledgment, confirmation, or other forms state terms additional to or different from those set forth herein, this document shall be deemed a notification of objection to such additional and/or different terms and a rejection thereof. This document constitutes an offer to sell (and not an acceptance of any offer to purchase) the goods and any services described herein which may be accepted only in accordance with its terms and without modification, deletion, or alteration. The provisions hereof shall be deemed to have been accepted by Purchaser hereby. All orders received are subject to acceptance by Wen Technology.

3. **CANCELLATION AND QUOTATIONS:** An in-process order may be canceled by Purchaser only with the written approval of Wen Technology and payment by Purchaser of all costs expended or committed prior to receipt of such cancellation notice which are related to the order and reasonable overhead and profit on such work completed.

4. **CHANGES:** Purchaser may from time to time, but only with the written consent of Wen Technology, make any change in the order or any of the specifications, requirements, or other documents incorporated therein. In the event of any such change, Wen Technology shall be entitled to revise its price and delivery schedules to reflect such change, and Purchaser shall pay to Wen Technology, the reasonable costs and other expenses (including engineering expenses and all commitments to its suppliers and subcontractors), incurred by Wen Technology prior to receipt of notice of such change, for all work rendered unnecessary by such change or incurred by Wen Technology thereafter for all work required to effect such change, as determined by Wen Technology. All authorized changes shall be evidenced by a change order signed by Wen Technology.

5. **DELIVERY, LOSS, DAMAGE, AND DELAY:** Unless otherwise agreed, Wen Technology reserves the right to make deliveries of all or part of the goods in advance of the time or times specified. Shipping dates given by Wen Technology are approximate and are based on prompt receipt of all necessary information regarding the order. If the purchaser requests delivery to be delayed, at that time Purchaser must notify Wen Technology of the date on which delivery is to be made. In the event of any such delay requested by Purchaser, or any delay caused by lack of shipping instructions, Wen Technology will store or cause to be stored all items ordered at Purchaser's risk and expense, and will invoice Purchaser for the full contract price of the goods on or after the date on which the same were originally scheduled for delivery. If manufacture is delayed by Purchaser, progress payments shall be made on a pro-rated basis, based on the percentage of work completed and the contract price.

Wen Technology shall not be liable for loss, damage, detention, or delay resulting from causes beyond its reasonable control or from fire, strike, or other concerted action of workmen, act of omission or any Governmental authority or of Purchaser, insurrection or riot, embargo, car shortage, wreck or delay in transportation, or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to compensate for the delay.

6. INSPECTION AND ACCEPTANCE:

A. On shipment the Company shall certify that the products have undergone test and inspection in accordance with current company quality assurance procedures, and conform in all respects with the inspection and/or test reports which may be provided with the goods.

B. Unless otherwise stated in writing, customer shall be deemed to have accepted the products upon successful completion by the Company of these tests.

C. Acceptance tests and inspections will be at the Company's plant and shall be conducted by the Company at its own expense and risk.

7. **SHIPMENTS, RISK OF LOSS AND TITLE:** All orders shall be shipped F.O.B. point of origin. Shipping charges shall be prepaid and invoiced to Purchaser. Unless Purchaser specifies a particular mode of shipment, shipment shall be made by the least expensive carrier given the nature of the product to be shipped. All risk of loss or damage to the goods sold hereunder shall pass to Purchaser upon delivery to the carrier. The goods shall remain the property of the Seller until Purchaser has fully paid for them.

8. **PACKING:** Without extra charge to the customer, the products shall be suitably packed and boxed for shipment in accordance with standard commercial practice and in a manner which shall reasonably assure the arrival of the products undamaged at its ultimate destination.

9. **PAYMENT:** Purchaser is obligated to pay any invoiced amount thirty (30) days from the date of each invoice, unless otherwise agreed to by Wen Technology in writing. If Purchaser delays shipments, payments shall become due on the date Wen Technology is prepared to make shipment. Goods held for Purchase shall be at the risk and expense of Purchaser. Purchaser agrees to pay interest equal to one and one-half (1.5%) percent per month on any payment not made when due.

10. **SALES AND SIMILAR TAXES:** The Purchaser hereby accepts exclusive liability for, and agrees to indemnify Wen Technology against liability for payment of any taxes (except income tax) levied by any taxing authority upon the goods sold hereunder, or in respect to the production, manufacture, storage, transportation, sale or use thereof. Unless otherwise stated, Wen Technology's prices do not include sales, use, excise, value added or similar taxes on the production, sale and/or delivery of any goods sold hereunder and therefore, they shall be separately billed by Wen Technology, if applicable, and Purchaser agrees to pay the same on receipt of a billing therefore. If Purchaser has obtained an exemption certification from any applicable taxing authorities, it must promptly deliver the same to Wen Technology prior to execution of this contract by Wen Technology. Upon delivery to carrier of all or any portion of goods, Purchaser assumes all property taxes or assessments upon such goods.

11. **REGULATORY LAWS AND/OR STANDARDS:** Wen Technology makes no promise or representation that the goods will conform to any laws, ordinances, regulations, codes of standards, except as particularly specified and agreed upon in writing by Wen Technology. Wen Technology prices do not include the cost of any related inspections or permits or inspection fees.

12. **TOOLING:** Except where otherwise expressly agreed, all patterns, tools, jigs and fixtures required in the performance of the order, notwithstanding any charges therefor, shall be and remain the property of and in the possession and control of Wen Technology.

13. **STORAGE AND HANDLING:** All materials or equipment in Wen Technology's possession which are owned or furnished by the Purchaser, will be carefully handled and stored, but Wen Technology shall not be responsible for accidental loss thereof or damage thereto.

14. **PURCHASER'S DEFAULT OR INSOLVENCY:** If the Purchaser becomes insolvent, is the subject of a bankruptcy or similar insolvency or reorganization proceeding, or is in default under the terms of this or any other agreement between the Purchaser and Wen Technology, Wen Technology shall be entitled at its option to discontinue further performance of all of part of the order and shall have the right to exercise all other rights and remedies provided by law or equity.

15. **PATENTS:** Wen Technology, at Wen Technology's option, shall defend any suit or proceeding brought against Purchaser based upon infringement by goods manufactured by Wen Technology (other than any goods manufactured in whole or in part to the specifications provided by Purchaser) of a U.S. Patent, if notified promptly in writing and given authority, information and assistance for defense of such suit or proceedings by the Purchaser, and Wen Technology shall pay all damages and costs awarded therein against Purchaser. In the event Purchaser is enjoined from the operation use and/or sale of the goods covered by the order Wen Technology shall, in its sole discretion, take all reasonable steps to procure for Purchaser the right to operate, use and sell said goods; or shall replace the goods with non infringing goods, or take back the goods and refund the purchase price thereof. The foregoing states Wen Technology's entire liability for patent infringement.

With respect to goods manufactured either in whole or in part to Purchaser's designs and specifications, Purchaser warrants that it has fully investigated said designs and specifications, including any furnished by Wen Technology, in connection with the goods and has determined that the production, sale, and/or use of the goods manufactured will not infringe any United States patents or any design, copyright, trade secret, or trademark of any third party. Purchaser and its successors in interest agree to defend, indemnify and hold harmless Wen Technology, its successors and assigns, against any claims, demands, costs and liabilities including legal expenses arising out of any such infringement or claimed infringement.

16. LIMITED WARRANTY:

A. WEN TECHNOLOGY MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS SOLD HEREUNDER EXCEPT AS SET FORTH IN SUBPARTS B AND C BELOW. SUCH WARRANTY IS GIVEN IN PLACE OF AND TO THE EXCLUSION OF ANY AND EVERY WARRANTY OR CONDITION IMPLIED BY COMMON LAW, STATUTE OR OTHERWISE. AND ANY AND EVERY SUCH IMPLIED WARRANTY INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS HEREBY EXPRESSLY DISCLAIMED.

B. Wen Technology warrants that all goods sold hereunder are free from harmful defects in material and workmanship, and conform to the specifications, if any, agreed upon in a writing signed by Purchaser and Wen Technology, or in the absence of such specifications, to Wen Technology's catalogue description of the goods. Certain major OEM assemblies furnished with Wen Technology systems may be excluded from this warranty, if so specified in the quotation or order acknowledgment.

C. This limited warranty is valid for a period of twenty four (24) months from date of shipment. Wen Technology agrees to rework or replace, at its option, any goods found to contain harmful defects in material or workmanship, provided Wen Technology is notified of such defects within seven (7) days from discovery of such defects, or such other period as may mutually be agreed upon in writing, and provided further that such goods have been maintained and/or operated in accordance with Wen Technology's recommendations and/or standard industry practice. Such reworking or replacement will be performed, at Sellers option, either (a) at Wen Technology's repair facility, provided that Purchaser shall pay all charges for and associated with the removal, transportation and reinstallation of the goods, or (b) at a location designated by the Purchaser. In the event Purchaser elects, pursuant to subparagraph (b) above, to have the goods repaired or replaced at a location other than Wen Technology's factory, then Purchaser agrees to pay Wen Technology an amount equal to all additional costs and expenses (such as travel, lodging, per diem, and excess labor costs arising from the performance of services at the location designated by Purchaser) incurred by Wen Technology in performing the repairs and/or replacements at the location designated by Purchaser. Correction of any nonconformity in the manner and for the period of time provided above shall constitute complete fulfillment of all liabilities of Wen Technology under the foregoing warranty.

D. Wen Technology shall not under any circumstances, be liable in contract, in tort (including negligence) or otherwise for any direct, indirect, special or consequential damages, expenses, or losses resulting from any operation of defects in the goods sold hereunder.

17. **INDEMNIFICATION:** Purchaser shall defend and hold Wen Technology harmless from all claims against either or both of them, for injuries to and/or death of, any and all persons, and for loss and/or damage to property arising under or by reason of the installation, erection, repair, adjustment of operation of the goods covered by this order.

18. **SEVERABILITY:** Should any term or condition herein contravene or be invalid or unenforceable under any applicable law, ordinance or similar regulation, the contract set forth herein shall not fall for such reason, but shall be construed as if the contravening, invalid or unenforceable provision were not included; EXCEPT THAT, if in the opinion of Wen Technology said provision is material and essential Wen Technology shall have the right, at its option to cancel this contract.

19. **CHOICE OF LAW AND VENUE:** This contract shall be governed by and construed under the laws of the State of North Carolina. Jurisdiction and venue of any action arising hereunder shall be in the state courts located in Wake County, North Carolina, and Purchaser hereby consents and agrees to such jurisdiction and venue.