

TERMS AND CONDITIONS OF SALES

Unless otherwise specifically agreed in writing, these Terms and Conditions of Sale shall apply to any order accepted or sale of any Products by American Computer Development, Incorporated, its subsidiaries or affiliates ("ACDI"). The contract of sale shall be formed when Customer's Purchase Order is accepted in writing by ACDI in Frederick, Maryland by the delivery of this Sales Order.

1. ACDI agrees to use best commercially reasonable efforts to manufacture the Products pursuant to Customer's written Purchase Order or changes thereto issued by Customer and accepted in writing by an authorized representative of ACDI.
2. Sales of any of the Products or parts described or referred to in Customer's Purchase Order is expressly conditioned upon the terms and conditions set forth herein. Any order for, any statement of intent to purchase or any direction to proceed with manufacture or shipment, of any Products or parts shall constitute acceptance of these terms and conditions and a representation that the Customer is solvent. Any additional or different terms or conditions set forth in Customer's Purchase Order or in any other communication from the Customer are hereby objected to by ACDI and shall not be effective or binding unless specifically agreed to in writing by an authorized representative of the ACDI.
3. Except as otherwise set forth on the front of an ACDI invoice or acknowledgment, terms of payment are net 30 days from invoice date; prices are EX WORKS ACDI's facility (Incoterms 2000); and prices do not include any taxes, freight, handling, duty or other similar charges, payment of which will be the sole responsibility of Customer. Prices are conditioned upon timely payment and any past due balance will accrue interest at the monthly rate of one and one-half percent. Freight charges may be constructed on the basis of standard carrier tariffs and may not reflect actual transportation costs. ACDI reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of customer's creditworthiness or should customer fail to fulfill any obligation when due.
4. In the absence of prior agreement as to shipping, ACDI may select a carrier. ACDI's responsibility for any loss or damage ends, and title passes, when products are delivered to the carrier, to Customer, or to Customer's agent (including, without limitation, any test house or value added service provider), whichever occurs first. Delivery times are approximate and are dependent upon prompt receipt by ACDI of all material and information necessary to proceed with the work without interruption. Customer acknowledges that many factors can affect the manufacture and/or delivery of Products, and shall not seek to hold ACDI liable or seek to cancel orders for delays in delivery that are not unreasonable. If any Products cannot be shipped when ready due to any cause referred to in Paragraph 8, ACDI may place such Products or parts in storage (which may be at the place of manufacture). In such event, (i) ACDI shall notify Customer of the placement of the Products in storage; (ii) ACDI's delivery obligations shall be deemed fulfilled and title and all risk of loss or damage shall thereupon pass to Customer, (iii) any amounts otherwise payable to ACDI upon delivery shall be payable upon presentation of ACDI's invoices therefore and its certification as to such cause, (iv) promptly upon submission of ACDI's invoices, Customer shall reimburse ACDI for all expenses incurred by ACDI, such as preparation for and placement into storage, handling, storage, inspection, preservation and insurance, and (v) when conditions permit and upon payment of all amounts due hereunder, ACDI shall assist and cooperate with Customer in any reasonable manner with respect to the removal of any Products or parts which have been placed in storage.
5. ACDI warrants those Products assembled or customized by it will conform to Buyer's specifications. ACDI warrants workmanship and those products passed tests agreed to be performed by ACDI for a period of 120 days from the date of delivery to Buyer for Turnkey Builds and for 60 days from the date of delivery to Buyer for Consignment Builds. All other products, and the components and materials utilized in any assembled or customized products, are covered by, and subject to, the terms, conditions, and limitations of the warranty, if any, of the manufacturer thereof, which warranty is expressly in lieu of any warranty, express or implied, by ACDI. Customer's exclusive remedy, under ACDI's warranties is limited, at ACDI's election, to one of (a) refund of customer's purchase price, (b) repair by ACDI of any Products found to be defective, or (c) replacement of any such Product. Customer acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY ACDI, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. ACDI ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO ACDI BY OR ON BEHALF OF CUSTOMER. Use of the Customer's part number on any document or on any Products is for convenience only and does not constitute any warranty by ACDI with respect to the performance, specifications, or fitness of any part for any purpose. Without limiting the foregoing disclaimer, Buyer understands, acknowledges and agrees that ACDI does not warrant any parts, components or other materials used in the manufacture of the Products. ACDI's obligations under this paragraph shall not apply to any Product or part thereof, or to any part or accessory sold by ACDI, which (i) has been modified or otherwise altered other than pursuant to ACDI's written instructions or written approval, or (ii) is normally consumed in operation, or (iii) is not properly stored, installed, used, maintained or repaired, or (iv) has been subjected to abuse, or any other kind of misuse, neglect or detrimental exposure or has been involved in an accident. ACDI does not warrant latent defects due to product design issues.
6. ACDI retains a purchase money security interest in all Products sold by ACDI to Customer, and in the proceeds of any resale of such Products, until the purchase price and any other charges due to ACDI have been paid in full. Upon any breach by Customer of these terms and conditions, ACDI will have all rights and remedies of a secured party under applicable law, which rights and remedies will be cumulative and not exclusive. Customer is responsible for all costs and expenses incurred by ACDI in collecting any sums owing by Customer (which may include, but are not limited to, collection agency and reasonable attorneys' fees). ACDI shall have the right to offset any sum owed by ACDI or any ACDI subsidiary to Customer against any sum owed by Customer to ACDI or any ACDI subsidiary.
7. Products are deemed accepted by Customer unless Customer notifies ACDI in writing within 10 days of delivery of Product shortages, damage or defect. Upon acceptance of each unit of Products, Customer waives any right to revoke such acceptance for any reason, whether known or unknown to Customer at the time of acceptance. No returns may be made for any reason without a Return Authorization Form issued by ACDI. If customer refuses to accept tender or delivery of any Products or returns any Products without authorization from ACDI, such Products will be held by ACDI awaiting Customer's instruction for 30 days, after which ACDI may deem the Products abandoned and dispose of them as it sees fit, without crediting Customer's account.
8. ACDI shall not be liable for delays in delivery or failure to perform due directly or indirectly to: (i) causes beyond ACDI's reasonable control, (ii) acts of God, acts of Customer, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), governmental priorities, change of government, government instability, port congestion, riots, revolutions, strikes or other labor disputes, fires, floods, acts of terrorism, sabotage, nuclear incidents, earthquakes, storms, epidemics, or (iii) inability due to causes beyond ACDI's reasonable control to timely obtain necessary and proper labor, materials, components, facilities, energy, fuel, transportation, governmental authorizations or instructions, material or information required from the Customer. The foregoing shall apply even though any of such causes exists at the time of the order or occurs after ACDI's performance of its obligations is delayed for other causes. ACDI reserves the right to cancel without liability any order, the shipment of which is or may be delayed for more than 30 days by reason of any such cause. If ACDI is unable to build or complete the manufacturing of any products as per schedules from the Customer due to reasons beyond ACDI's control and due to delays by the Customer including but not limited to holds, product design issues, test plan delays, or obsolete or unavailable parts, then Customer will issue a purchase order to ACDI, and ACDI shall invoice Customer with terms net 5 days for an inventory prepayment in the amount equivalent to the amount of the stagnant inventory that ACDI has diligently purchased to support Customer delivery schedules per leadtimes (supplier and ACDI processing - including placing supplier PO's up to 3 months early and for the entire order quantity to ensure material availability) and minimum order quantities. Customer shall recover such inventory prepayments as an offset to the material content associated with invoices against future shipments of the delayed products. Customer shall also reimburse ACDI for all expenses incurred by ACDI associated with such materials including but not limited to storage, handling, inspection, preservation and insurance.
9. The validity, performance and all matters relating to the interpretation and effect of this instrument shall be governed by the laws of the State of Maryland, U.S.A., excluding its conflict of laws rules. Customer consents to the personal jurisdiction of the state and federal courts in the State of Maryland, U.S.A., which courts shall constitute the exclusive forum for all disputes, arising out of or relating to this instrument, or the business transaction to which this instrument applies. The parties waive any right to trial by jury.
10. If Customer's order is placed under a contract with the United States Government, ACDI agrees to comply only with those contract provisions and regulations with which, pursuant to law, it must comply and of which Customer has, at the time of order placement, placed ACDI on written notice. In no event will United States Government Cost Accounting Standards apply. All rights in technical data and software owned or licensed by ACDI are hereby reserved and deemed restricted or limited. Unless specifically otherwise agreed in writing by ACDI, customer acknowledges that products sold by ACDI are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify and hold ACDI harmless from any loss, cost or damage resulting from Customer's breach of the provisions of this paragraph.
11. All Products shall at all times be subject to the export control laws and regulations of the U.S.A. and any amendments thereof. Customer agrees that it shall not make any disposition of U.S.A. origin Products purchased from ACDI, by way of trans-shipment, re-export, diversion or otherwise, other than in and to the country of ultimate destination specified on Customer's Purchase Order or declared as the country of ultimate destination on ACDI's invoices and for the stated intended end use, except as said laws and regulations may expressly permit.
12. ACDI will comply with applicable United States federal, state and local laws and regulations as of the date of acceptance of Customer's order which relate to equal employment opportunity (including applicable provisions of Executive Order 11246, as amended), workers compensation, and the manufacture in ACDI's facilities of the Products delivered hereunder (including applicable provisions of the Fair Labor Standards Act of 1938, as amended). The price and, if necessary, delivery of any Products will be equitably adjusted to compensate ACDI for the cost of compliance with any change in federal, state or local laws or regulations thereafter. THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT BE APPLICABLE TO ANY AGREEMENT SUBJECT TO THESE TERMS AND CONDITIONS OF SALE.
13. THE TOTAL LIABILITY OF ACDI, INCLUDING ITS SUB-CONTRACTORS AND SUPPLIERS, ON ANY AND ALL CLAIMS OF ANY KIND, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT), STRICT LIABILITY, EQUITY, QUASI-CONTRACT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY AGREEMENT SUBJECT TO THESE CONDITIONS OF SALE OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT OR PART OR THE FURNISHING OF ANY SERVICE, SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT OR PART OR SERVICE WHICH GIVES RISE TO THE CLAIM. ANY SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) EQUITY, QUASI-CONTRACT OR OTHERWISE, SHALL ACDI, OR ITS SUBCONTRACTORS OR SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF CUSTOMER'S CUSTOMERS FOR SUCH DAMAGES, ALL OF WHICH ARE WAIVED IN FULL BY CUSTOMER. IF CUSTOMER TRANSFERS TITLE TO, OR LEASES THE PRODUCTS SOLD HEREUNDER TO, OR OTHERWISE PERMITS OR SUFFERS USE BY, ANY THIRD PARTY, CUSTOMER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING ACDI AND ITS SUB-CONTRACTORS AND SUPPLIERS THE PROTECTION OF THE PRECEDING SENTENCE.
14. The performance of any value added service may void the warranty and render Products non returnable. Purchase Orders incorporating such services are, accordingly, non cancelable and the Products are non returnable. Any third party value added service provider is deemed to be an agent of Customer.
15. Any software or other intellectual property included in or relating to Products is supplied by its manufacturer or licensor. ACDI makes no representation or warranty with respect thereto and will have no liability in connection therewith. Customer agrees to comply with all requirements with regard to proprietary and similar rights in and to any intellectual property (including any requirement to enter into a separate license agreement and prohibitions against duplicating or disclosing the same), even if ACDI has broken the seal on any "shrink wrapped" software. If Customer provides ACDI with any intellectual property, Customer warrants that it has all necessary legal rights to such property. Customer will indemnify ACDI against and hold it harmless from any and all liability, cost or expense arising from a breach or purported breach of the requirements described in this section.
16. ACDI may assign Customer's accounts receivable to an ACDI affiliate. In order to defray the cost of Customer account administration, any credit balance or other sum owed to Customer which remains unclaimed by Customer for a period of eighteen months will become the property of ACDI.
17. No Purchase Order or Customer obligation may be cancelled, rescheduled, reconfigured, or assigned without ACDI's prior written authorization and, in such event, Customer will be liable to ACDI for any additional costs and expenses incurred by ACDI (i.e. Engineering Chgs., Excess Inventory, Restocking, Minimum Order Quantities, etc). Customer may submit proposed Engineering Charges to ACDI and agrees to pay ACDI a minimum evaluation charge of \$500 per Engineering Change. Prices are subject to change by ACDI upon Customer rescheduling or reconfiguration of Purchase Order(s).