

# LSI COMPUTER SYSTEMS, INC. TERMS AND CONDITIONS OF SALE

- APPLICABILITY:** LSI/CSI's sales to Buyer of the products shown on the face hereof is made under only the terms and conditions of this document, regardless of whether executed by Buyer in the first instance or sent to Buyer as an acknowledgment of a previous purchase order issued by Buyer. In such latter case, this document shall be considered as the offer and shall be deemed accepted by Buyer unless Buyer gives notification to LSI/CSI promptly on receipt. LSI/CSI does not sign or return any purchase order acknowledgment forms and will not be bound by the terms of any such form.
- PRICES:** Prices apply only if the quantity ordered is released within twelve (12) months and shipments scheduled no more than twelve months from the date of the first shipment; otherwise, Seller's standard prices in effect of such receipt date for the quantity actually shipped shall apply.
- TAXES:** The indicated price is exclusive of all taxes levied on the sale, use and transfer of the products or on the products after being placed in possession of the carrier. Buyer agrees to furnish LSI/CSI a sales/use tax exemption certificate or reimburse LSI/CSI for any such taxes as may be paid by LSI/CSI, in which event they shall be itemized separately on the invoice.
- SHIPPING - DATES AND DELAYS:** LSI/CSI does not warrant any shipping date whether indicated prior to or after this contract is effective. Such date, if any, is LSI/CSI's best estimate, but LSI/CSI shall not be liable for delay. Without limiting the generality of the foregoing, LSI/CSI shall not be liable for delay due to causes and contingencies beyond its control, including but not limited to strikes, labor trouble, wars, fires, floods, explosions, accidents, sabotage, inability to obtain essential materials or equipment, and all laws, orders, ordinances or regulations of any government, governmental body or agency.
- SHIPPING - CHARGES AND INSURANCE:** All sales are made F.O.B. Melville, New York. If Buyer so requests, LSI/CSI may prepay shipping charges and insurance, which shall be itemized separately on the invoice. LSI/CSI will assist Buyer in filing claims for loss or damage. Shipment will be made in accordance with Buyer's instructions, and if none are provided, LSI/CSI is authorized to utilize any method appropriate.
- DELIVERIES AND PAYMENTS:** LSI/CSI reserves the right to make deliveries in installments. Partial shipments may be billed as made. All invoices are due on receipt. LSI/CSI reserves and Buyer hereby grants to LSI/CSI a purchase money security interest in each and every item until payment in full is received for the entire order even if shipped or paid in installments. LSI/CSI may file a copy of the agreement any time after acceptance as financing statement or a financial statement (which Buyer agrees to execute or which LSI/CSI may execute as Buyer's agent) with appropriate state and/or local authorities in order to protect LSI/CSI's security interest. Upon failure to make payment when due, LSI/CSI may repossess and resell any item then delivered or stop in transit any quantity then shipped to the extent of any unpaid amounts and may in addition exercise any other right and remedy available to it.
- PRODUCT ACCEPTANCE:** Buyer shall accept or reject products included in each shipment within thirty (30) days from receipt. If Buyer fails to notify Seller in writing of its rejection and the reasons therefor within such time period, Buyer will be deemed to have accepted such shipment.
- WARRANTY:** Seller warrants that the products covered hereby shall be free from defects in workmanship and materials, and shall conform to Seller's published specifications or other specifications accepted in writing by the Seller for a period of one (1) year from the date of Seller's shipment. The foregoing warranty does not apply to any products which have been subject to misuse (including state discharge), neglect, accident or modification or which have been soldered or altered during assembly and are not capable of being tested by Seller under its normal test conditions. Seller's sole obligation to Buyer hereunder for products failing to meet the aforesaid warranty shall be, at Seller's discretion, to replace the nonconforming product or issue Buyer credit for the purchase price of the nonconforming product, where within the warranty period; (1) Seller has received written notice of any nonconformity, and (2) after Seller's written authorization to do so has returned the nonconforming product to Seller, freight prepaid, and (3) Seller has determined that the product is nonconforming, and that such nonconformity is not a result of improper installation, repair, or other misuse by Buyer. Any replacement product shall carry only the unexpired term of the warranty which was applicable to the replaced product. Seller's liability and obligations for failure to comply or meet with the foregoing warranty shall in all events be limited to repair, replacement or refund of the purchase price of the nonconforming products and in no event shall such liability and obligations exceed the purchase price of such products.  
  
THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF A LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF ITS PRODUCTS, AND SELLER MAKES NO WARRANTY WHATSOEVER FOR PRODUCTS NOT MANUFACTURED BY SELLER. SELLER SHALL HAVE NO LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE SALE, INSTALLATION OR USE OF ITS PRODUCTS.
- MODIFYING SPECIFICATIONS:** Seller may modify the specifications of goods designed by Seller and substitute goods manufactured to such modified specifications provided such goods substantially conform to this contract.
- RIGHT TO MASK, TOOLING AND WEAR & TEAR:** Unless separately stated, no right to any mask or any other tooling is included in the purchase price to Buyer. Seller shall not be liable for ordinary wear and tear to Buyer's furnished tools.
- INFRINGEMENT:** Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any goods manufactured and supplied by Seller to Buyer constitute direct infringement of any duly issued United States Patent and Seller shall pay all damages and costs finally awarded therein against Buyer, provided that Seller is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Seller's expense) necessary to defend or settle said suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specifications, or form a combination with, an addition to, or a modification of the goods after delivery, by Seller, or from use of the goods, or any part thereof, in practice of a process. Seller's obligations hereunder shall not apply to any infringement occurring after

Buyer has received notice of such suit or proceeding alleging the infringement unless Seller has given written permission for such continuing infringement.

If any goods manufactured and supplied by Seller to Buyer shall be held to infringe any United States Patent and Buyer shall be enjoined from using the same, Seller will exert its best efforts, at its option and at its expense, (1) to procure for Buyer the right to use such goods free of any liability for patent infringement or (2) to replace such goods with a non-infringing substitute otherwise complying substantially with all the requirements of this contract or (3) refund the purchase price and transportation costs of such goods.

If the infringement by Buyer is alleged prior to completion of delivery of the goods under this contract, Seller may decline to make further shipments without being in breach of this contract, and provided Seller has not been enjoined from selling said goods to Buyer. Seller agrees to supply said goods to Buyer at Buyer's option, whereupon the patent indemnity obligations herein stated with respect to Seller shall reciprocally apply with respect to Buyer.

If any suit proceeding is brought against Seller based on a claim that the goods manufactured by Seller in compliance with Buyer's specifications and supplied to Buyer directly infringe any duly issued United States Patent, then the patent indemnity obligations herein stated with respect to Seller shall reciprocally apply with respect to Buyer. The sale by Seller of the items ordered hereunder does not grant to, convey or confer upon Buyer or Buyer's customers, or upon anyone claiming under Buyer, a license, expressed or implied, under any patent rights of Seller covering or relating to any combination, machine or process in which said items might be or are used.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, IN REGARD THERETO. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS OR COPYRIGHTS.

- INTELLECTUAL PROPERTY:** All drawings, diagrams, specifications and other materials furnished by Seller and identified as confidential relating to the use and service of articles furnished hereunder, and the information therein, are proprietary to Seller. Such materials have been developed at great expense and may contain trade secrets of the Seller. Buyer may not reproduce or distribute such materials except to Buyer's employees who may use the articles as part of their duties. All such materials relating to the articles supplied directly by Seller (except information as may be established to be in the public domain or disclosed pursuant to judicial or government action) shall be received in confidence, and Buyer shall exercise reasonable care to hold such information in confidence.
- A. DEFAULT OF BANKRUPTCY:** In the event of any default by Buyer, or the bankruptcy, insolvency or receivership of Buyer, Seller may decline to make further shipments and/or may terminate this order without in any way affecting its rights and remedies including, but not limited to, shipments after default by Buyer. Seller's action shall not constitute a waiver, nor in any way affect Seller's legal remedies.

**B. CANCELLATION – STANDARD PRODUCTS:** Buyer may cancel any order for standard products upon written notice to Seller. Buyer shall pay to Seller, as a rescheduling/restocking charge, 15% of the price for each cancelled item which is scheduled for shipment within sixty (60) days from date of receipt of cancellation notice at the appropriate Seller Division Headquarters.

**C. CANCELLATION – CUSTOM PRODUCTS:** If Buyer cancels orders for customer designed products, then Buyer shall pay to Seller the cancellation charges set forth below, which charges shall be a percentage of the purchase price based on the number of days before scheduled delivery that the written cancellation notice is received at the appropriate Seller Division Headquarters:

Percentage (%) of Purchase Price	Days before Scheduled Delivery
100	0 – 60
75	61 – 90
50	91 – 120
20	121 – 180

- SPECIAL PRODUCT ORDERS:** Special Product Orders are those for products not in Seller's catalog or those requiring sample, environments, mechanical or life testing, 100% reliability screening, or any combination thereof. These provisions apply to such orders and are in addition to or supersede all other clauses contained herein.
  - Shipment or products within five percent (5%) of the quantity ordered, but not in excess of that shall constitute full delivery.
  - Seller assumes no responsibility for refund or replacement of products shipped at Buyer's request prior to successful completion of acceptance tests performed by Seller at Buyer's request, except those subject only to Buyer's incoming electrical inspection.
- TECHNICAL ADVICE OR SERVICE:** Seller's warranty shall not be enlarged, and no obligation or liability shall arise out of Seller's rendering of technical advice, facilities or service in connection with Buyer's order or the goods furnished.
- DAMAGES:** In no event shall LSI/CSI be liable for indirect, special or consequential damages of any nature arising out of the existence, furnishing, functioning or use of any product provided hereunder.
- GOVERNING LAW:** The validity, performance and construction of this contract shall be governed by the laws of the State of New York. This Agreement constitutes the entire agreement of the parties and supersedes all prior quotations, negotiations and other documents unless specifically referenced. This Agreement may not be assigned by either party without the other's consent. This Agreement may not be changed or modified in any way subsequent to the date of the execution except by an instrument signed in writing by both parties.
- SETTLEMENTS:** Any controversy, claim or dispute arising out of or relating to this agreement, or breach of performance thereof, shall be settled by arbitration held in New York, New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the arbitration award rendered may be enforced in any court having jurisdiction thereof.