



Defendi North America, Inc GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

1. Applicability.

These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods, equipment, services, technology and processes ("Goods") by Defendi North America, Inc. ("Seller") to the buyer named on the reverse side of these Terms ("Buyer"). Seller's quotation or order confirmation (the "Sales Confirmation") are expressly made subject to these Terms. Such Sales Confirmation and these Terms (collectively, this "Agreement"), comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Seller's acceptance of Buyer's order shall not constitute an acceptance of or agreement to any provision on any form or document supplied by Buyer, which are different from or additional to these Terms. Any such different or additional terms and conditions are hereby expressly rejected. Seller's Sales Confirmation may only be modified or amended by a written agreement signed by an authorized officer of Seller.

2. Material Furnished by Seller.

Seller reserves the right to correct clerical and typographical errors and to modify all specifications, prices, quantities and terms at any time and to modify, improve, or discontinue all Goods, or to change the specifications of Goods, at any time, without notice.

3. Price.

- Unless otherwise agreed, all prices (the "Prices") are net F.O.B. Seller's facility and do not include: (i) freight, special packaging, insurance and any other costs incurred in respect of the shipping and delivery of Goods; (ii) installation as well as parts and supplies including, but not limited to, any wiring used in the installation of Goods; (iii) training; and (iv) any sales, excise or use tax whether local, state or federal.
- The cost of packaging for transportation, including pallets, spacers, boxes and wire baskets ("Transportation Packaging"), shall be charged at Seller's cost price.
- Before delivery of Goods to a carrier for shipment, Prices may be increased due to unforeseen circumstances, such as increases in labor or material costs, and Buyer may be invoiced on the basis of such increased Prices.

4. Payment Terms.

- Terms are net 30 days on all Goods from the date of Seller's invoice unless otherwise agreed in writing. A daily finance charge of 18% per annum, not to exceed the maximum rate allowed by law, shall be made on any portion of Buyer's outstanding balance which is not paid within thirty (30) days from the date of invoice. Payment shall not be deemed to have been received by Seller unless and until the respective amounts have been finally credited to Seller. All bank fees and charges shall be borne by Buyer. The receipt and acceptance by Seller of partial payment shall not constitute a waiver of any Seller's rights set forth herein or provided by law, including, without limitation, the right to cancel.
- If Seller, in its reasonable discretion, determines that the financial condition of Buyer at any time jeopardizes Buyer's ability to perform any of its obligations towards Seller, Seller may require cash in advance, cash payment on delivery, immediate payment of the entire balance, and/or additional security satisfactory to it. Buyer's failure to timely and fully to pay an invoice shall operate to make all other outstanding invoices of Seller to Buyer immediately due and payable, and at the discretion of Seller, shall be grounds for cancellation of any further performance by Seller.
- Any collection expenses incurred by Seller shall be borne by Buyer. Such collection expenses shall include Seller's reasonable costs and expenses (including attorney's fees and court costs) for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling Goods as well as any deficiency resulting from a sale of Goods. The reasonable costs and expenses (including attorney's fees and court costs) of Seller incurred in any defense against third party claims to Goods shall also become part of Buyer's indebtedness to Seller.
- In addition to the foregoing provisions, and in addition to any other remedies it may have under these Terms or under applicable law, if Buyer fails to make payment when due, Seller may repossess Goods and put the same into storage, at Buyer's expense, or dispose of Goods as Seller, in its sole discretion, deems practicable under the circumstances. Buyer hereby authorizes Seller or its agent to enter the premises of Buyer for such purposes and to do such acts and things relating thereto (e.g., bringing in manpower, rigging and lifting equipment, etc.).
- Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

5. Delivery.

- Unless otherwise agreed in writing, delivery of Goods shall be made F.O.B. Seller's facility. Any and all delivery dates stated by Seller in the Agreement are non-binding estimates only and are subject to the submission by Buyer of any required documentation and information relating to such Goods, including technical details, drawings, plans, specifications, approvals and releases. Risk of loss or damage to Goods sold hereunder, whether delivery F.O.B. or otherwise, shall pass to Buyer when Goods are placed into the possession of the carrier. All shipments and deliveries by Seller shall be made in a manner, and by carriers, determined by Seller at its reasonable discretion, except as otherwise agreed upon in writing.
- If shipment or delivery is delayed for any reason caused by Buyer or in its sphere of control, including, but not limited to, requests for changes with respect to Goods, (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- In the event of non-payment, when due, of any amount payable hereunder or breach of any agreement by Buyer hereunder or if Seller deems itself insecure for any reason whatsoever, then (i) Seller is authorized to take possession of any collateral and, for that purpose, may enter, with the aide and assistance of any person or persons, any premises where the collateral or any part thereof is, or may be, placed and remove the same, and (b) Seller shall have the right from time to time to sell, resell, assign, transfer and deliver all or any part of the collateral, at any broker's board or exchange, or a public or private sale or otherwise, at the option of Seller, for cash or on credit or for future delivery in a way and upon such terms and conditions as Seller may deem proper; provided, that upon each such sale, Seller may, unless prohibited by applicable statute which cannot be waived, purchase all or any part of the collateral being sold, free from all claims, right of redemption and equities of Buyer, which are hereby waived and released. In addition to the rights and remedies given to Seller hereunder or otherwise, Seller shall have all of the rights and remedies of a secured party under the Georgia Uniform Commercial Code.

6. Non-delivery.

The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's facility is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within seven business days of the date when Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of Goods shall be limited to replacing Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

7. Inspection and Rejection of Nonconforming Goods.

- Buyer shall inspect Goods upon receipt ("Inspection Period"). Buyer will be deemed to have accepted Goods unless it notifies Seller in writing of any Nonconforming Goods within five business days of their receipt and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods F.O.B. Seller's facility.
- Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 7(b) with respect to Nonconforming Goods and Section 8 for other Goods, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Returns.

Other than Nonconforming Goods pursuant to Section 7, no Goods may be returned without Seller's prior written permission. If Goods (other than Nonconforming Goods pursuant to Section 7) are returned without authorization, Seller may charge Buyer a restocking fee at Seller's discretion of up to 50% of the amount invoiced and all freight charges for returned Goods even if Goods are in apparent good order and condition. Goods that were special order or made to order are credited only at their scrap value. Seller may dispose of Goods without obligation to Buyer.

9. Provision of Buyer Materials

- Materials provided by Buyer, including sample materials, designs specified or defined by Buyer, shall be inspected by Seller only for purposes of (i) identifying the materials provided, and (ii) inspecting the same for transportation damages. Seller shall notify Buyer within ten (10) working days following inspection of any detected transportation damages. Seller shall have no further obligations in respect to the inspection of the Buyer's materials provided or notifications of defects.
- Materials provided by Buyer shall be stored by Seller by using ordinary care in accordance with industry practices. Seller shall not be required to (i) store the materials provided in a separately storage facility; (ii) mark them as Buyer provided; or (iii) insure the materials provided.
- Buyer shall bear the sole responsibility with respect to the materials provided. Buyer represents and warrants to Seller that all materials provided do not violate any domestic or foreign intellectual property rights or other rights of third parties (including governmental authorities). Buyer shall indemnify Seller and hold Seller harmless from all losses, damages, fees and expenses arising from or related to claims of infringement of intellectual property rights in connection with materials provided by Buyer.
- Any processing clauses stipulated by Buyer with respect to Buyer materials provided are rejected and shall not apply.

10. Software- and Buyer specific IC's.

- If software programs ("Software"), Buyer specific IC's, documentation and/or circuits are included with Goods (collectively, "Deliverables"), Buyer is granted a non-exclusive and non-assignable license for its internal use of such Deliverables in connection with Goods for which such Deliverables are supplied. Any further use of such Deliverables, for instance together with a third party's or Buyer's hardware, is explicitly prohibited unless a separate written license agreement has been entered into with Seller.
- Seller reserves all other rights to the Deliverables, including copies and later modifications. Buyer shall not permit these to be accessed by third parties without Seller's prior written consent.
- Copies of the Deliverables shall only be made for archiving purposes or as reasonably necessary for error checking. Source programs shall only be made available in accordance with a separate written agreement. If any Deliverable is marked with a copyright notice, Buyer must also attach such a notice to all copies.

11. Spare Parts.

With respect to Goods, Seller shall maintain a reasonable inventory of spare parts ("Parts") for a period of five (5) years from date of delivery, provided, that such obligation shall be subject to Seller's receipt from Buyer of regular (and in no event less than quarterly) forecasts as to the quantities of such Parts Buyer expects to purchase. Buyer shall be obligated to purchase all such Parts on or before the expiration of the applicable five (5) year period.

12. Limited Warranty.

- Seller, as its sole warranty, represents that Goods for a period one (1) year from date of delivery conform to their written specifications.
- Seller further warrants for a period of one (1) year from the date of delivery that Software materially conforms to its written specifications.
- If Goods deviate, or in case of Software materially deviate, from their written specifications, Seller shall, at its sole discretion, provide a credit for the price paid for such deviating Goods or the Goods containing the materially deviating Software or repair or replace the same without charge. Upon discovery of any purported deviation, Buyer shall immediately notify Seller thereof and grant Seller the time and opportunity to investigate the purported deviation. If Seller exercises its option to replace deviating Goods or materially deviating Software, Buyer shall ship such deviating Goods or the Goods that contain the materially deviating Software to Seller's facility in accordance with Seller's instructions. Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Seller's expense, the replaced Goods. Risk of loss or damage to such Goods shall pass to Buyer when such Goods are delivered to the carrier.
- Seller's exclusive responsibility under this warranty is limited to such credit, repair or replacement.
- This warranty shall be void, if (i) Goods or Software are not operated, maintained, handled, stored, installed, assembled, integrated or commissioned in accordance with the oral or written instructions furnished by Seller or are not used in accordance with the product compendium furnished by Seller or are repaired or maintained without Seller's express authorization; (ii) Goods are injured or damaged as a result of water, fire, unsuitable field of application, chemical, electro-chemical or electrical influences or neglect; (iii) Goods or Software are modified or altered without prior written consent of Seller; (iv) any required documentation and information relating to such Goods, including technical details, drawings, plans, or specifications provided by Buyer are inaccurate; (v) Buyer fails to notify Seller within twenty (20) days of any claimed breach of Seller's warranty, said time to run from the time when Buyer learns that Goods or Software are not operating as warranted; or (vi) Buyer fails to make any damaged or defective Goods or Software available to Seller for inspection.
- This warranty shall further be void, if on the date of delivery of Software, (i) Buyer does not meet the minimum hardware and Software requirements, (ii) Software has been installed on hardware other than the agreed upon hardware without Seller's written consent, (iii) Software other than that disclosed to Seller on the date of the Agreement between Buyer and Seller has been installed on the hardware or on

connected hardware and Buyer has not provided evidence that such different Software has not interfered in the use of the delivered Goods or Software or (iv) Buyer has modified the Software without Seller's written consent or (v) Buyer has not used the Software as intended.

- g) Specifically excluded from Seller's warranty is the replacement of parts with a limited life due to normal wear, and any parts where the manufacturer thereof provides its own warranty. Repairs or parts not within Seller's warranty shall be charged to Buyer at Seller's regular rates, plus expenses portal to portal.
- h) THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, AND SELLER DISCLAIMS ANY AND ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES WITH RESPECT TO GOODS AND SOFTWARE, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; OR (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
- i) In the event that Seller assists Buyer with project support for Goods that are integrated with Buyer's systems, Seller's liability shall be exclusively limited to such Goods and Seller shall have no liability for Buyer's overall system.

13. Limitation of Liability.

- a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR GOODS SOLD HEREUNDER.

14. Stock upon Termination.

Upon termination of this Agreement for any reason, Buyer shall pay (i) with respect to Goods that are considered standards: for any inventory remaining at Seller; and (ii) with respect to Goods that were made "on spec" or otherwise special ordered: for any inventory remaining at Seller, all work in process, cancellation charges and any other costs incurred by Seller.

15. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16. Confidential Information.

All non-public, confidential or proprietary information of Seller, including, but not limited to, Deliverables, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing or as otherwise permitted pursuant to this Agreement. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

17. Consulting and Development

- a) If Seller's services include consulting and development services, Seller shall become the sole owner of any and all results of such services as well as all interim results, including but not limited to copyrights, patents, trademarks, intellectual property rights, and usage rights. Seller shall be exclusively entitled to apply for any new rights resulting from such services including, but not limited to all patents, copyrights, trademarks or all other forms of protection. For this purpose, Buyer shall provide Seller with all necessary documentation regarding previously obtained work products from sources other than Seller, including, but not limited to any and all interim results, records, photographs, technical data, drawings, standard sheets, print layouts, gauges, tools, forms, profiles, samples, models and prototypes.
- b) If, by operation of law, through use or otherwise, Buyer should acquire any right, title or interest in or to any of the results of Seller's services, Buyer agrees to immediately assign and transfer to Seller any such right, title or interest, without any compensation. Buyer will not copyright, obtain patents or other proprietary rights or otherwise appropriate, sell or distribute any of the results of Seller's services, and will give to Seller all reasonable assistance to perfect and maintain the rights described in paragraph 17(a). If the results of Seller's services are protected by rights obtained by third parties, Buyer shall use its best efforts to cause such third parties assign to Seller all such rights.

18. Force Majeure.

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

19. Assignment.

Neither party shall assign this Agreement without prior written consent of the other party, provided, however, that Seller can assign the Agreement in whole or in part to an Affiliate. For the purposes of this Agreement, an "Affiliate" means any entity directly or indirectly controlled by, in control of or under common control with Seller.

20. Export.

- a) The sale of Goods under this Agreement may be subject to U.S. and foreign export control laws and regulations.
- b) Buyer declares that such Goods are not intended for, and will not be utilized for, shipment to an embargoed country, as prohibited by 31 CFR Chapter 5 of regulations adopted by the United States Treasury Department and 15 CFR Chapter 7 of the Export Administration Regulations (hereinafter "EAR") adopted by the United States Department of Commerce.

- c) Seller's quotation or acceptance is contingent upon any order received in response thereto qualifying, if necessary, for shipment of Goods under a General License G DEST (or other General License) under the EAR. In the event that Buyer places an order in response to Seller's quotation and Seller knows that Goods ordered are to be shipped to an embargoed country, then Seller has the right to cancel the order without penalty. Nothing contained in Buyer's purchase order shall cancel, modify or supersede the foregoing provisions. Any attempt to do so shall be null and void or, in the alternative, shall negate any contract between the parties so that Buyer's order, or Seller's acceptance, shall not result in a contract enforceable against Seller.
- d) Buyer shall comply with all applicable federal and foreign laws, regulations and rules, and complete all required undertakings (including obtaining any necessary import/export license or other governmental approval), prior to exporting, re-exporting or releasing any Goods. Buyer shall provide prior written notice of the need to comply with such laws and regulations to any person, firm or entity which it has reason to believe is obtaining any such Goods from Seller with the intent to export.

21. Advertising.

Buyer will not advertise, publish or disclose to any third party (except for Buyer's professional advisors and confidential and as really necessary) in any manner the fact that Buyer has contracted to purchase Seller's Goods covered by this Agreement or any of the specifications of this Agreement (including prices), or use any trademarks or trade names of Seller in press releases, advertising or promotional material without the previous written consent of Seller.

22. Notices.

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or e-mail of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. Severability.

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Governing Law, Venue.

The business relationship between Seller and Buyer shall be governed by, and construed in accordance with, the laws of the State of Georgia without giving effect to its conflict of laws provisions. Trade terms used in this Agreement shall be construed in accordance with the most current version of the Incoterms. All disputes between Seller and Buyer in any way relating to Goods, Software or Deliverables shall be decided by, and Buyer consents and submits to the sole and exclusive jurisdiction of the State or Federal courts of competent jurisdiction in Coweta County, State of Georgia, which is the venue of Seller's place of business; provided, however, that Seller, in its discretion, may elect instead to pursue any legal action against Buyer in any other court having jurisdiction over the subject matter.