

## TERMS AND CONDITIONS OF SALE

**1. Scope.** The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by Varedan Technologies ("Seller") in connection with the sale of goods and services, including without limitation, hardware, firmware and software products, training, maintenance, engineering, parts, repair and remanufacturing services (hereinafter, "Products"). These Terms apply to all sales made by Seller except to the extent the Terms conflict with a Sales Agreement signed by Seller and Buyer. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

**2. Order Acceptance.** All purchase orders are subject to acceptance by Seller. A purchase order issued by Buyer and accepted and acknowledged by Seller shall be hereinafter referred to as an "Order."

**3. Prices.** The prices charged for Products shall be those stated on the Order. Unless otherwise specified by Seller, all prices are FOB Seller's plant in Torrance, California, All prices are in U.S. dollars.

**4. Taxes.** Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, Federal or foreign governments. Any such taxes shall be the responsibility of Buyer. Taxes will be added by Seller to the invoice where Seller is required by law to collect them, and will be paid by Buyer unless Buyer provides Seller with proper tax exemption documentation in form and substance satisfactory to Seller.

**5. Non-Cancelable and Non-Returnable.** Due to the custom nature of Seller's products all orders are non-cancelable and non-returnable.

**6. Delivery.** Unless otherwise specified by Seller, all prices are FOB Seller's plant in Torrance, California. Buyer is responsible for all freight charges and will select the carrier for shipments. Dates specified by Seller shall be approximate, and Seller shall incur no liability for failing to ship on such dates. Seller reserves its right to ship Products to Buyer in installments or separate lots. Partial shipments on quantity orders shall be deemed a separate and independent contract for billing.

**7. Title/Risk of Loss.** Title to hardware and risk of loss passes to Buyer upon delivery to carrier at shipping point.

**8. Acceptance of Products.** Products are deemed accepted by Buyer upon delivery, unless Seller receives a written notice of defect or nonconformity within five (5) business days after receipt by Buyer, provided, that such acceptance shall not relieve Seller of its warranty obligations hereunder.

**9. Payment Terms.** Where seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice. Seller reserves the right to set forth other payment/credit terms or to change payment/credit terms if Buyer's financial condition changes or Buyer fails to make any payment when due. A service charge of one and one-half (1.5%) percent per month shall be paid by Buyer upon all late payments. Upon Buyer's failure to make any payment due, or to accept the Products hereunder, Seller may rescind the Order and Buyer shall, at Seller's request, return all goods delivered, if any, and pay to Seller liquidated damages in a sum equal to thirty percent (30%) of the list price of the Products, which Buyer agrees is the fair measure of damages. All international sales are paid in advance of shipment.

**10. Warranty.** All hardware Products manufactured by Seller are warranted against defects in materials and workmanship for a period of one (1) year from the date of shipment. This warranty is limited to the original purchaser and further limited to repair or replacement as Seller deems most appropriate. In the event of any defects in materials or workmanship, or if the hardware fails during normal use to operate in accordance with the current published specifications, within the warranty period, Seller will, at its sole option, repair or replace the defective Products covered by this warranty without charge. To obtain warranty service, Buyer must contact Seller to receive a Return Materials Authorization (RMA) number prior to returning Products to Seller. No item which is claimed to be defective may be returned to Seller unless Seller's customer service department first authorizes such return. The defective Products must be returned within 30 days of the expiration of the applicable warranty period to Seller, properly packaged, and with transportation and insurance prepaid by Customer. Seller will pay the return shipping charges (ground) for Products that have been repaired or replaced under the warranty only to destinations in the United States. Buyer is responsible

for paying the return shipping charges for destinations outside of the United States. This warranty does not apply to accidents or Buyer actions, including, but not limited to, mishandling, improper interfacing, operation outside of design limits, unauthorized modification, misuse, or negligence. Seller makes no warranty that its products are fit for the use or purpose to which they may be put by Buyer, whether or not such use or purpose has been disclosed to Seller in specifications or drawings previously or subsequently provided, or whether or not Products are specifically designed and/or manufactured for Buyer's use or purpose. Material and workmanship used in the repair and replacement of hardware Products under this warranty are warranted additionally against defects for a period of ninety (90) days from the date of return of shipment to customer. EXCEPT AS SET FORTH ABOVE, PEAK SERVO WILL MAKE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO SUCH PRODUCTS, AND SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**11. Limitation of Liability.** The total liability of Seller for any claim or damage, whether in contract or in tort, shall not exceed the price of the individual Product(s) whose defect or damage is the basis of the claim. SELLER WILL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF ITS PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12. Software/Firmware License.** Buyer is granted a non-exclusive, non-transferable license to use provided Seller's software or firmware only in object code form and solely in conjunction with Seller-provided hardware Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware. Computer software programs, including firmware, that may be included in or embedded within Seller-provided hardware Products sold to Buyer have been designed to perform a given set of tasks as defined in the documentation provided and is offered "AS IS." Buyer understands that such software programs are of such complexity that they may have inherent defects and that Seller makes no warranty that all software features will perform correctly as supplied.

**13. Export Control.**

Buyer certifies that it will be the recipient of the Products to be delivered by Seller. Buyer understands that the associated hardware, software, and/or technical data ("products") listed on their Purchase Order includes items that are governed by the U.S. Export Administration Regulations ("EAR"), by the U.S. Foreign Assets Control Regulations ("OFAC") and the International Traffic in Arms Regulations ("ITAR"). The Buyer understands that its sale or distribution of said products may constitute exports or re-exports, and as such, must be in accordance with the requirements administered by Bureau of Industry and Security, Department of Treasury, and Department of State. It is understood that the country of ultimate destination, commodity classification, end-user, or end-use for any said products, could affect the applicable license requirements and exportability. The Buyer agrees to consult various resources, such as the EAR, ITAR, and OFAC, by the U.S. Department of Commerce's Bureau of Industry and Security's ("BIS") Export Counseling Division, and other appropriate Government Sources to ensure that the sales and distribution of said products, is processed in accordance with all applicable laws. The Seller will not transfer any export-controlled products to a "non-U.S. Person" without the proper authority of the United States Government, and the buyer's written approval.

**14. Indemnification.** Buyer shall indemnify and hold Seller harmless from any and all damages, fees and costs (including attorney's fees) on account of any claim that Products manufactured by Seller to specifications provided by Buyer infringe on any patent, trademark, registered design, or other form of protected intellectual property right. Buyer agrees to indemnify Seller (including paying all reasonable attorneys' fees and costs of litigation) against and hold Seller harmless from, any and all claims (including attorney's fees) by any other party resulting from Buyer's acts (other than the mere marketing of products and or services), omissions or misrepresentations, regardless of the form of action.

**15. Cancellation by Seller.** Seller may decline to make further shipments and/or cancel Buyer's order if Buyer is in default on payment or any obligation to Seller or in the event that Buyer becomes insolvent or bankrupt, makes a general assignment for the benefit of, or enters into any arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws instituted against it. In the event Seller is unable to perform, wholly or in part, because of any cause beyond its control, Seller may cancel an Order without any liability to the Buyer.

**16. General.** If any provision of the Terms contained herein is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired. Seller's failure to exercise any of its rights under the Terms contained herein shall not constitute a waiver or forfeiture of such rights. No waiver, alteration or modification of any of the provisions hereof shall be binding on Seller unless in writing and signed by duly authorized representative of Seller and Buyer. In any arbitration, action or other proceeding relating to the sale of Products hereunder, or the breach or interpretation hereof, the prevailing party shall be entitled to reasonable attorney's fees and costs, including investigative costs, as determined by the trier of fact. The terms contained herein will be governed by and construed in accordance with the laws of the State of California, USA, without regard to the conflict of laws principles thereof.