

Variosystems Terms and Conditions of Sale

1. Terms and Conditions; Purchase Orders. These Variosystems, Inc. ("**Variosystems**") Terms and Conditions of Sale or any modified version then in effect at the time of Purchase Order acceptance (these "**Terms**") govern all Purchase Orders ("**P.O.**") and other communications sent by **Customer** to Variosystems for electronic assemblies (the "**Products**") as well as any services Variosystems may provide to **Customer**. **Customer** accepts the then-current version of these Terms by submitting a P.O. or any change thereto and/or by accepting any Variosystems quote. These Terms are valid and binding without signature and can be found at www.variosystems.com/terms-and-conditions. Modifications to these Terms may be posted from time to time on such website. Variosystems' performance hereunder and provision of any Products or services to **Customer** is strictly limited to the terms and conditions contained herein, and Variosystems hereby objects to and expressly rejects any additional or different terms proposed by **Customer** (whether in **Customer's** P.O., terms and conditions, or other acknowledgment form) at any time. These Terms may only be varied for a specific accepted P.O. by written agreement explicitly referencing these Terms and specifically identifying any such variance to these Terms. All requests for Products or services must be made by written P.O. Variosystems is not obligated to accept any P.O. A P.O. is binding on Variosystems only after Variosystems confirms the terms of the P.O. by written acceptance. Once accepted by Variosystems, a P.O. cannot be modified except by mutual written agreement of both parties and **Customer** is responsible for all additional charges associated with such modification.

2. Delivery/Inspection.

a. Variosystems will use commercially reasonable efforts to timely deliver to **Customer** the Product as specified in a P.O. on the mutually agreed upon release date(s) and within the **Customer's** "on-time" delivery window; however, VARIOSYSTEMS PROVIDES NO GUARANTEE THAT DELIVERY WILL OCCUR ON ANY SPECIFIED DATE. Unavoidable changes to the delivery date and the reason(s) for such change will be communicated to **Customer** as soon as reasonably possible.

b. Variosystems will ship the Products to **Customer** Ex Works, Variosystems' facility in Southlake, Texas. Title and risk of loss to Products will pass to **Customer** upon Variosystems' delivery to the carrier for shipment to **Customer**, regardless of whether Variosystems has arranged for transportation as a courtesy to **Customer**.

c. **Customer** must promptly inspect the Products to confirm delivery of the ordered items and quantities and must notify Variosystems in writing of any discrepancies within ten (10) days of the third-party carrier's delivery of the shipment to **Customer**. Damages or shortages sustained in transit must be raised directly with the applicable third-party carrier.

3. Credit and Payment Terms. Invoices are due and payable, without offset or deduction, net (30) thirty days after invoice date (or as otherwise mutually agreed between Variosystems and Customer); provided however, Variosystems reserves the right in its sole discretion to require full payment in advance. **Customer** is responsible for any taxes, duties, or government levies resulting from the sale of Products or services hereunder, excluding any taxes on Variosystems' income. Variosystems reserves the right to charge interest on all late amounts at a rate of the lesser of (i) eighteen percent (18%) per annum or (ii) the highest permissible rate under applicable law, until paid in full. **Customer** must promptly review each invoice and raise any objections in writing within ten (10) days of invoice date or such objections will be deemed to have been waived. **CUSTOMER IS NOT ENTITLED TO OFFSET OR DEDUCT FROM ANY AMOUNTS DUE AND PAYABLE TO VARIOSYSTEMS ANY DISPUTED AMOUNTS OR AMOUNTS CUSTOMER ALLEGES ARE OWED FROM VARIOSYSTEMS.**

4. Security Interest. To secure **Customer's** prompt and complete payment and performance of any and all present and future indebtedness and liabilities to Variosystems, **Customer** hereby grants to Variosystems a lien on and security interest in and to all of the right, title and interest of **Customer** in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code. Variosystems may file a financing statement for the security interest and **Customer** must

execute any statements or other documentation necessary to perfect Variosystems' security interest in the Products. **Customer** also authorizes Variosystems to execute, on **Customer's** behalf, statements or other documentation necessary to perfect Variosystems' security interest in the Products. Variosystems is entitled to all applicable rights and remedies of a secured party under applicable law.

5. Warranty

a. THE FOLLOWING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, AND VARIOSYSTEMS EXPRESSLY DISCLAIMS ANY OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, USE, OR QUIET ENJOYMENT, AND OF ANY OTHER WARRANTY OBLIGATION ON THE PART OF VARIOSYSTEMS. VARIOSYSTEMS DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL BE ERROR-FREE OR THAT THE PRODUCTS WILL PERFORM WITHOUT INTERRUPTION. **CUSTOMER** ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY VARIOSYSTEMS, OR ANY OTHER PERSON OR REPRESENTATIVE ON VARIOSYSTEMS' BEHALF, EXCEPT AS STATED IN THIS SECTION 5.

b. Warranty on Fabrication and Manufacturing: Variosystems fabricates electronic assemblies per the electronics industry standard IPC-A-610 (current Revision at time of manufacture), Class 2 "Acceptability of Electronic Assemblies" in effect as of the date of fabrication (the "**IPC Standard**") and warrants the Products against workmanship defects based upon visual and/or X-ray inspection per the acceptability parameters defined within the IPC Standard, for a period of twelve (12) months from the original Product shipment date, which is determinable by the Product serial number or lot date code. Bottom Terminated Components (BTCs) will use a maximum allowed voiding of 50% as determined by X-ray evaluation per Variosystems process control procedures, as determined by Variosystems in its sole discretion. If the acceptance criteria are not specifically defined in the IPC Standard then Variosystems will use electronics industry guidelines and Variosystems process controls procedures, as determined by Variosystems in its sole discretion.

c. Warranty on ICT or Function Testing: With respect to ICT or Function testing of a Product, if **Customer** requests and pays for an ICT or Function test, Variosystems warrants against errors that are covered in the test and should have been caught by the test, which includes defective components if the ICT or Function test should have detected the defective component, for a period of twelve (12) months from the original Product shipment date, which is determinable by the Product serial number or lot date code. PROVIDED HOWEVER, THIS WARRANTY ON ICT OR FUNCTION TESTING EXPRESSLY EXCLUDES ERRORS OR DEFECTS IN THE ICT OR FUNCTION TEST DESIGN OR ERRORS THAT ARE NOT CAUGHT DUE TO ERRORS OR DEFECTS IN THE ICT OR FUNCTION TEST DESIGN.

d. NOTWITHSTANDING THE FOREGOING, THESE WARRANTIES EXPRESSLY EXCLUDE ANY DAMAGE OR DEFECT CAUSED BY OR ATTRIBUTABLE TO: (I) **Customer's** or any third party's misuse, modification, negligence, improper maintenance, or stress, (II) electrical circuit malfunction or placement of the Product in an unsuitable physical or operating environment, (III) errors in design of the Products, errors or defects in the ICT or Function test design, diagnostics errors, application specifications errors, lack of design margin, errors in specifications, or errors in bills of materials as provided or directed by **Customer**, or (IV) defective components supplied by third-party manufacturers (except in the specific instance described in Section 5(c) above). In the event of a component defect, Variosystems will endeavor to assist the Customer in enforcing the warranty claim against the manufacturer.

e. **CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR VARIOSYSTEMS' FAILURE TO MEET ITS WARRANTY IS AS FOLLOWS:** (1) **Customer** must notify Variosystems in writing and request a warranty Return Material Authorization ("**RMA**") form and Variosystems must receive the applicable Product(s) at its Southlake facility (shipped at **Customer's** expense) before the expiration of the twelve (12) month warranty period in order for **Customer** to be entitled to a warranty evaluation. **Customer** must comply with all applicable Variosystems terms and conditions for the RMA form and for packaging and shipping the Product(s) to Variosystems for warranty evaluation. (2) If Variosystems' warranty evaluation confirms a workmanship defect (as

described in Section 5(b)) or a defect that should have been caught by the ICT or Function test (as described in Section 5(c)) (as applicable, a "Warranted Defect"), the Product will be repaired, retested (if a test is available), final inspected and returned to **Customer** at no charge within a commercially reasonable timeframe. If applicable, if the ICT or Function test should have detected a defective component (as described in Section 5(c)), Variosystems will replace the defective component within a commercially reasonable timeframe. (3) If Variosystems' warranty evaluation does not confirm a Warranted Defect, additional costs and charges will apply (at Variosystems' then-current rates) depending on **Customer's** instructions to Variosystems for further work on or disposition of the Product(s). FAILURE TO OBTAIN AN RMA FORM AND RETURN THE PRODUCT(S) TO VARIOSYSTEMS' SOUTHLAKE FACILITY BEFORE THE EXPIRATION OF THE TWELVE (12) MONTH WARRANTY PERIOD AND/OR FAILURE TO FOLLOW ALL OF VARIOSYSTEMS' TERMS AND CONDITIONS FOR THE RMA FORM AND FOR THE PRODUCT RETURN PROCESS WILL VOID THE WARRANTY.

f. VARIOSYSTEMS' DESIGN AND ENGINEERING SERVICES, INCLUDING WITHOUT LIMITATION TEST DESIGN SERVICES, ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND.

6. Purchase Orders Are Non-Cancellable by Customer. Due in part to Variosystems' substantial commitment of resources and non-cancellable purchases from third-parties, ONCE **CUSTOMER'S** P.O. HAS BEEN ACCEPTED BY VARIOSYSTEMS IN WRITING, IT IS NON-CANCELLABLE BY **CUSTOMER** FOR ANY REASON. If **Customer** does cancel a P.O. after Variosystems' acceptance, **Customer** agrees to accept delivery of and pay in full for (in accordance with these Terms) all Products under the P.O. that Variosystems has already completed and all Products in process at the time of cancellation. Additionally, **Customer** agrees to pay to Variosystems on demand a cash amount equal to the following costs and charges: (i) the cost of components Variosystems purchased or ordered that cannot be returned or cancelled (calculated as the unit purchase price plus ten percent (10%) for freight and handling) and, in Variosystems' discretion, cannot reasonably be reused or repurposed for other products; plus (ii) all third-party return/restocking fees charged to Variosystems as a result of **Customer's** cancellation. Notwithstanding the foregoing or anything to the contrary herein, if **Customer** is in default of its payment obligations under any P.O., or becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, Variosystems may, in its sole discretion, reject or cancel subsequent P.O.s (even P.O.s that have been accepted by Variosystems) or stop delivery of any Products in transit without liability to **Customer**, and **Customer** will be liable for the payment obligations, costs, and charges specified in this Section 6 in connection with such cancellation as though the P.O. had been cancelled by **Customer**.

7. Confidentiality/Non-Disclosure. All information obtained by either party in connection with any P.O. will be maintained in confidence for a period of five (5) years following the P.O.'s completion. The parties must not disclose the pertinent terms of these Terms or specific P.O. terms to others, other than their attorneys, accountants, consultants, taxing or other governmental agencies entitled to demand the information or others to which disclosure is reasonably required in the performance of these Terms, except as may be necessary to enforce these Terms. Nothing contained in these Terms will be deemed to grant to either party either directly or by implication, estoppel or otherwise, any ownership, title, license or other right to any patents, copyrights, trademarks, trade secrets, or other proprietary rights owned or licensed by the other party.

8. Force Majeure. Variosystems is excused from any failure or delay if and to the extent it is prevented or delayed by reason of any contingency beyond its reasonable control, including without limitation, component or materials shortages or delays, shipping delays, telecommunications breakdown, interruption in utilities, labor dispute, strike, terrorism, war or other hostilities, embargo, governmental order or regulation, insurrection, riot, fire, flood, or act of God, act of any government authority.

9. Limitation of Damages. IN NO EVENT WILL VARIOSYSTEMS BE LIABLE FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, COSTS OF RECALL, LOSS OF PROFITS, OR DIMINUTION IN VALUE ARISING OUT OF OR RELATING TO THESE TERMS OR VARIOSYSTEMS' MANUFACTURE OR SALE OF THE PRODUCTS OR PROVISION OF SERVICES TO CUSTOMER, WHETHER OR NOT THE POSSIBILITY OF SUCH

DAMAGES HAS BEEN DISCLOSED BY **CUSTOMER** OR COULD HAVE BEEN REASONABLY FORESEEN BY EITHER PARTY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE. REGARDLESS OF THE FORM OF ANY CLAIM MADE, IN NO EVENT WILL VARIOSYSTEMS' AGGREGATE LIABILITY EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID BY **CUSTOMER** TO VARIOSYSTEMS FOR THE SPECIFIC PRODUCT(S) OR SERVICES GIVING RISE TO THE CLAIM.

10. INDEMNIFICATION. **CUSTOMER** HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS VARIOSYSTEMS AND ITS AFFILIATES, PARENT COMPANIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL SUITS, CLAIMS, CAUSES, OBLIGATIONS, LIABILITIES, DAMAGES, COSTS, AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS) ARISING OUT OF OR RELATING TO, DIRECTLY OR INDIRECTLY, (I) THE ACTIONS OR OMISSIONS OF **CUSTOMER** OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, INCLUDING, BUT NOT LIMITED TO, THE BREACH OF THESE TERMS BY **CUSTOMER**, OR (II) INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, TRADEMARKS, COPYRIGHTS, TRADE SECRET RIGHTS, OR ANY OTHER THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS WHERE SUCH THIRD-PARTY INTELLECTUAL PROPERTY WAS SPECIFIED, REQUIRED OR DIRECTED BY **CUSTOMER** IN CONNECTION WITH THE PRODUCTS OR SERVICES. **CUSTOMER** MUST MAINTAIN SUFFICIENT LIABILITY INSURANCE TO COVER ITS OBLIGATIONS UNDER THESE TERMS.

11. Export Regulations. **Customer** agrees to comply with all applicable export control laws and regulations and hereby gives its written assurance that Products, in whole or in part, are not intended to be shipped, directly or indirectly, to prohibited countries.

12. Miscellaneous.

a. **Relationship of Parties.** Variosystems is an independent contractor of **Customer** and therefore is not an agent, employee, partner, or joint venturer.

b. **Waiver.** No failure or delay on the part of Variosystems in exercising any right or remedy will operate as a waiver. No provision of these Terms may be waived except as specified in Section 1.

c. **Severability.** If any term or provision of these Terms is found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remainder of these Terms will remain valid and enforceable as if the invalid term, condition, or provision were not a part of these Terms.

d. **Entire Agreement.** These Terms constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all previous communications, representations, understanding and agreements, either oral or written, between the parties or any official or representative hereof.

e. **No Assignment.** These Terms and the rights and obligations hereunder and any P.O. cannot be assigned by **Customer** without prior written approval of Variosystems.

f. **Applicable Law.** These Terms are governed by and construed in accordance with the laws of the State of Texas, excluding any provisions on conflicts of law. The exclusive jurisdiction and venue for any legal proceeding arising from these Terms or Variosystems' manufacture or sale of Products or provision of services to Customer will be those courts located in Tarrant County, Texas. The parties will make good faith efforts to resolve any dispute, but if any legal action is necessary to enforce the terms and conditions of these Terms, the prevailing party will be entitled to reasonable attorney's fees and court costs in addition to any other relief to which that party may be entitled.

g. **Disclaimer of Certain Conventions.** The parties hereby exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to these Terms, including all terms, obligations, requirements, and duties that may be said to exist or arise from such conventions.

h. **Survival.** Except as otherwise expressly provided in these Terms, each of the rights and obligations of the parties contained in these Terms will survive in accordance with their terms, beyond any termination of a P.O. or the parties' relationship.