



## TERMS AND CONDITIONS OF SALE

### UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS & CONDITIONS:

1. **GENERAL** PGI International, Ltd. ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the Terms and Conditions ("Terms") set forth herein. PGI hereby objects to and rejects any additional or different terms proposed by Buyer, including those contained in Buyer's purchase order, unless an authorized PGI representative expressly agrees to such terms in writing. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver, consent, agreement, change or modification of the terms set forth herein. Buyer's acceptance of the Products sold hereunder will manifest Buyer's unqualified acceptance to the Terms hereof. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, price will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

3. **TAXES AND OTHER CHARGES** Prices for the Products exclude any and all sales, excise, property, ad valorem, value added, and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby. Buyer shall pay directly or reimburse Seller immediately upon demand for any and all such taxes or duties. If Buyer claims any exemption, Buyer must provide Seller with a valid, signed certificate or letter of exemption for each respective jurisdiction.

4. **TERMS OF PAYMENT** All payments shall be made in U.S. Dollars. Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. All orders are subject to credit approval. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. Seller reserves the right, among other remedies, to suspend further deliveries in the event Buyer fails to pay for any one shipment when payment becomes due.

Buyer hereby agrees not to "charge-back" or debit sales orders for any alleged error or defect on the part of Seller. Buyer may only seek recourse under the Warranty, Section 11, to have the parts repaired or replaced by Seller, at Buyer's cost for transportation of parts.

5. **SECURITY INTEREST** Seller reserves and Buyer hereby grants to Seller a purchase money security interest in all Products until such time as Buyer fully pays for such Products. Buyer agrees to assist Seller in taking the necessary steps to perfect and protect such security interest. Buyer agrees, if requested, to execute a financing statement as may be necessary to perfect and maintain such security interest including the execution and delivery to Seller of a financing statement consistent with local custom and law.

6. **DELIVERY** All shipping dates are approximate only, and Seller will make reasonable efforts to meet the same. Timely delivery is subject to prompt receipt from Buyer of accurate and complete technical and shipping information. Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to

deliver which is due to any cause beyond Seller's reasonable control. If no shipping terms are stated on the customer purchase order, the Products will be shipped to the destination specified by Buyer, Ex Works Seller's facility in Houston, TX. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account.

7. **TITLE AND RISK OF LOSS** Notwithstanding the trade terms contained herein and subject to the provisions of Section 5 above and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

8. **CANCELLATION OR CHANGES BY BUYER** Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Products returned without the prior written consent of Seller. Unless otherwise provided in Seller's Documentation, if Buyer cancels or partially cancels an order, Seller's cancellation charges require Buyer to promptly pay Seller for all work performed on account of the Products prior to cancellation and for any other costs incurred by Seller as a result of such cancellation, less the cost of any items that, in Seller's judgment, can be restocked, which shall be subject to a restocking fee consistent with Seller's practices, but in no event greater than 50%. The actual restocking fee will depend on the amount of work that has been performed on the order, and also on the amount of engineering and manufacturing customization that the order required. In addition, Buyer shall promptly pay Seller as liquidated damages and not as a penalty an amount equal to 10% of the difference between the contract price hereunder and the amounts due pursuant to the preceding sentence.

9. **PRODUCT ACCEPTANCE** Except for Products that are not assembled at Seller's facility, Buyer has the right to inspect Products at Seller's facility prior to shipment provided that advance written arrangements are made by Buyer and are confirmed in writing by Seller. Any and all costs associated with inspection and testing requested by Buyer at Seller's facility will be paid by Buyer. Buyer shall inspect the Products upon receipt of such Product. Unless Products are subject to an Acceptance Test as specified below, the Buyer's failure to inspect the Products and give written notice to Seller of any alleged defects or non-conformity within ten (10) days after receipt of such Product shall constitute Buyer's irrevocable acceptance of the Products delivered. Once the Products have been accepted as described herein, PGI will only accept returns at its discretion and Products must be in the same condition as was received by Buyer. All returned goods are subject to a 35% restocking fee and Buyer is responsible for all costs including but not limited to shipping, taxes, and duties of returned Products.

If Seller's Documentation provides that the Products are subject to specific acceptance testing (the "Acceptance Test") in order to verify Product performance in accordance with agreed specifications, the Products shall be deemed fully accepted when they have satisfied the requirements of the Acceptance Test. If Buyer is

responsible for conducting the Acceptance Test, the Acceptance Test shall be conducted as soon as practicable, but in no event later than ninety (90) days after delivery. If Buyer fails to perform Acceptance Test within ninety (90) days, the Products will be deemed to be automatically accepted and conforming. Notwithstanding any right conferred upon the Buyer to inspect or test the Products prior to acceptance, any use or alteration of the Products by Buyer, its agents, employees or licensees, for any purpose after delivery thereof, shall constitute Buyer's irrevocable acceptance of the Products. Accordingly, in the event of any discovery by Buyer of a non-conformity or defect following such acceptance of the Products, Buyer's sole recourse is a warranty claim pursuant to the Warranty Section 11 stated herein.

10. **FORCE MAJEURE** Seller shall not be in breach of this contract or liable for any delay in performance or for nonperformance of any obligation hereunder if, and to the extent that, Seller is unable to perform because of the occurrence of any event of Force Majeure as defined below. All additional costs of performance incurred by Seller as a result of a Force Majeure event shall be borne by the Buyer. Force Majeure herein shall mean any act, event or condition to the extent that it materially and adversely affects Seller's ability to perform its obligations in accordance with the terms hereof if such act, event or condition is beyond Seller's reasonable control and is not the result of Seller's willful neglect, error, omission or failure to exercise reasonable due diligence. Force Majeure acts, events or conditions shall include, but not be limited to: (a) an act of God, earthquake, fire, flood, hurricane, explosion, bombing, war, act of terrorism, blockade, riot or similar occurrence; (b) a change in applicable law, including a change in regulations resulting in Seller's increased cost of compliance; or (c) strikes, lockouts, work stoppages or labor disputes affecting Seller or any subcontractor of Seller. In such event, Seller shall be required to resume performance upon termination of the Force Majeure event and shall have reasonable additional time for performance. In addition, as a consequence of a Force Majeure event, Seller shall have the right to cancel the order or to apportion its Products among its customers in a manner as Seller may deem equitable without incurring any liability to the Buyer.

11. **WARRANTY** Seller warrants that the Products will operate substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for a period of one (1) year or the period as specified in Seller's Literature from the date of shipment. The Warranty Period will begin on the date title passes to the buyer as determined above by Section 7. Repaired products shall be warranted for the remainder of the original warranty period. Replaced products shall be warranted for a new full warranty period.

Seller agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any defect and further provided that all costs of returning the defective Products to Seller are pre-paid by Buyer, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said specifications. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the provisions of Section 6 above. Lamps, fuses, bulbs and other expendable items are expressly excluded from the warranty under this Section 11. Seller's sole liability with respect to equipment, materials, parts or software furnished to Seller by third party suppliers shall be limited to the assignment by Seller to Buyer of any such third party supplier's warranty, to the extent the same is assignable.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage of the Products or (vii) use of the Products in combination with equipment or software not supplied or approved by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by the warranty provided in this Section 11, Buyer shall pay Seller therefore at Seller's then prevailing time and materials rates.

THE OBLIGATIONS CREATED BY THIS SECTION TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 11, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS WILL ACCOMPLISH ANY PARTICULAR RESULT.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

12. **INDEMNIFICATION** Buyer and Seller shall each defend, indemnify and hold the other, harmless from and on account of all bodily injury and property damage claims, liabilities, causes of action, suits, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) asserted by third parties as a result of the other's negligent acts or omissions. To the extent that both Buyer and Seller are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of a claim by a third party against either Buyer or Seller, then in such event, Buyer and Seller shall each be responsible for a portion of the liability, including costs and expenses, attributable to its comparative share of the total negligence.

Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the claim. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Seller agrees to indemnify and hold harmless Buyer against any third party claim alleging that the Products infringe upon a valid and enforceable United States patent, provided Buyer gives Seller written notice immediately when such claim is asserted, directly or indirectly. Notwithstanding the foregoing, Seller shall have no liability to Buyer if any patent infringement or claim thereof is based upon or arises out of (a) compliance with designs, plans or specifications furnished by or on behalf of Buyer; (b) use of the Products in a manner for which the Products were neither designed nor contemplated; or (c) the claimed infringement of any patent in which the Buyer or any affiliate or subsidiary of Buyer has any direct or indirect interest by license or otherwise.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

13. **INSURANCE** Seller and Buyer hereby agree to maintain: Commercial General Liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Commercial General Liability insurance shall include coverage for bodily injury, property damage, products/completed operations and contractual liability.

14. **LIMITATION OF LIABILITY** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 11 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED

HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (A) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) IS NEGLIGENT. ALL OF BUYER'S CLAIMS OR ACTIONS OF ANY DESCRIPTION WHATSOEVER AGAINST THE SELLER SHALL BE BROUGHT NO LATER THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENT UPON WHICH EACH CLAIM OR ACTION IS BASED.

**15. DEFAULT AND TERMINATION** The substantial failure of either party to comply with the terms of this contract shall constitute default hereunder. Upon default by one party, the other party shall provide written notice clearly specifying the nature of the default. The defaulting party shall have thirty (30) days to cure the default. If the default is capable of being cured within thirty (30) days and is not cured within thirty (30) days, this contract may be terminated. In the case of default that cannot be cured within thirty (30) days, this contract shall not be terminated so long as the defaulting party has given written notice of extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. In the event of any termination, Seller shall be paid for Products delivered and services rendered (including Products specifically manufactured/assembled for the client that have yet to be supplied) through the date of termination. For purposes of this contract, the failure of Buyer to pay Seller in accordance with the payment terms hereunder shall be considered a substantial default for which no cure period beyond 30 days shall be allowed. In the event of the Buyer's default, Seller may, in addition to the right to terminate set forth in this paragraph, elect to suspend work until the default has been cured. No delay or omission on the part of the Seller in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.

**16. INTELLECTUAL PROPERTY** All devices, equipment, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller in connection with the Products sold hereunder shall remain Seller's exclusive property. Buyer shall not disclose any such material to third parties without Seller's prior written consent. Buyer will not undertake any analyses or "reverse engineering" of the products for the purpose of designing, developing or manufacturing by the Buyer or by any third party of products that compete with the Product(s). Seller will retain sole ownership of all discoveries, improvements, inventions, patents, trademarks, copyrights, know-how, trade secrets, or other intellectual property rights associated in any way with the Products. The parties specifically agree that all improvements, inventions, discoveries and copyright in works of authorship, including those in formative stages, made by either party hereto (either alone or jointly with others) improving upon or related to the Products shall from the time of conception or, in the case of works of authorship, from the time of creation, be the property of Seller.

**17. COMPLIANCE WITH LAWS** The Buyer understands and hereby agrees and acknowledges that it will not use any of the Products or take any action in connection with the performance of its obligations under this Agreement that is in any manner contrary to the applicable laws, regulations or rules of the governments of the United States or, any states or subdivisions thereof. The Buyer agrees to indemnify the Seller and its directors, officers, employees and representatives against and hold them harmless from any and all claims, damages, losses, liabilities, costs and expenses arising from or relating to any breach or violation of any such laws, regulations or rules.

Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed

country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents, or customers.

**18. DISPUTE RESOLUTION** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Houston, Texas. The arbitration shall be heard and determined by a single arbitrator selected in accordance with the Commercial (or other) Arbitration Rules of the American Arbitration Association. In addition, any arbitration proceeding pursuant to this Section 18 shall be conducted in accordance with such arbitral rules. The cost of the arbitration proceedings (including fees and disbursements of counsel) shall be borne in the manner determined by the arbitrator. The decision of the arbitrator shall be final, binding and conclusive, and judgment on the award (if any) of the arbitrator may be entered in any court of competent jurisdiction.

**19. ENTIRE AGREEMENT** This contract constitutes the entire agreement between the parties relating to the sale of the products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the sale of the products made by any PGI representative, which are not stated herein, shall be binding on PGI. No addition to or modification of any provision of this contract shall be binding upon PGI unless made in writing and signed by a duly authorized PGI representative. No course of dealing or trade usage or course of performance shall be relevant to explain or supplement any term in this contract. These terms and conditions shall prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any purchase order or other writing not expressly incorporated herein, including but not limited to data sheets, application notes and purchase order. The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this contract.

**20. MISCELLANEOUS** (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) This contract is entered into solely between, and may be enforced only by the Buyer and Seller; and this contract shall not be deemed to create any rights in third parties, including customers of the Buyer, or to create any obligation to any such third parties. (c) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the STATE OF TEXAS, without reference to its choice of law provisions. (d) In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. In the event any dispute cannot be settled through arbitration as stated in Section 19, each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Harris County, Texas, in any action arising out of or relating to this Agreement and waive any other venue to which it may be entitled by domicile or otherwise. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (e) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded. (f) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (g) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (h) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.