

Strategic Global Technologies

Terms and Conditions of Sale

1. Acceptance

1.1. These terms and conditions constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all oral or written agreements and understandings with regard to such subject matter. No additions to or modifications of Strategic Global Technologies' ("Seller") terms and conditions shall be binding upon Seller unless agreed to by Seller in a signed document executed by an authorized officer of Seller. If a purchase order or other communication from Buyer includes any term or condition contrary to, or in addition to, the terms and conditions stated herein, Buyer's acceptance of the products and services which are the subject hereof, after receipt of these terms and conditions from Seller, shall constitute Buyer's complete and unconditional assent to the terms hereof notwithstanding anything to the contrary in any such earlier purchase order or communication, unless Buyer clearly instructs Seller in writing, within two days of Seller's acceptance of purchase order, to cancel the order. If Buyer elects to cancel the order, Buyer is responsible for all costs subject to sections 6.1, 6.2 and 6.3 below. Buyer's communication of contrary or additional terms and conditions at any time, shall be construed as an offer to supplement and/or amend Seller's terms and conditions. Such offer shall be deemed rejected unless accepted by Seller in the manner set forth in the second sentence of this paragraph.

2. Prices

2.1. All quotations by Seller are subject to change without prior notice to Buyer and are valid for 30 days unless otherwise specifically stated in the quotation. Seller's acceptance of orders are made subject to approval by Seller of Buyer's credit and payment history. All sales, contracts and orders become effective only if and when approved and accepted in writing by Seller. Seller expressly conditions its acceptance of any sale, contract, or order on the adoption by Buyer of the Terms and Conditions of Sale.

2.2. All quotations are made and orders accepted on the basis of Seller's prices in effect at the time of order acceptance, except as otherwise specifically agreed in writing. All prices are subject to change without notice per sections 6.1, 6.2 and 6.3 below. All prices are in United States Dollars.

2.3. Any taxes or fees related to the sale of goods or services, excluding federal income taxes, which the Seller may be required to pay or collect will be charged to the Buyer.

2.4. Unless otherwise stated all prices are Ex Works Seller's factory or location of manufacture (Incoterms 2000) and do not include insurance, duties, taxes, and / or similar charges.

2.5. All payments shall be made in United States Dollars.

2.6. Seller reserves the right to sub-contract all or any part of the Buyer's purchase order to a third party.

3. Payment

3.1. Terms. The terms of payment for each order shall be listed on the quote related to said order; except as otherwise stated in a written agreement signed by a duly authorized representative of Seller. Past due accounts shall (i) bear interest at the lesser rate of one and one half (1 ½) per cent per month or the maximum rate allowed by applicable law and (ii) accrue reasonable collection costs, including legal fees and expenses, payable as incurred. In the event of nonpayment by Buyer of any debt, obligation or liability now or hereafter incurred or owing by Buyer to Seller, Seller shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the State of Arizona, USA.

3.2. Letter of Credit. Seller may require Buyer to furnish Seller with a letter of credit subject to the Seller's Letter of Credit Instruction to Buyer.

4. Title and Delivery

4.1. Unless otherwise stated, delivery terms are Ex Works Seller's factory or location of manufacture (Incoterms 2000).

4.2. Buyer is responsible for all costs and risks involved in taking the goods from the Seller's factory or from the location of manufacture as designated by the Seller. All responsibility of Seller shall end, and all goods shall become property of Buyer, when the goods have been placed at the disposal of the Buyer, at the Seller's premises or at the location of manufacture designated by the Seller.

4.3. Seller is not obligated to make delivery by any specified date, but will always use its best efforts to make delivery within the time requested. The proposed shipment date is an estimate. Under no circumstances shall Seller have any liability whatsoever for loss of use or for any direct or consequential damages resulting from delay regardless of the reason.

4.4. Seller reserves the right to deliver product purchased by Buyer in quantities that deviate from those ordered on the understanding that the ratio of the product delivered to product ordered will have no greater deviation than 5%. Payment will be based on quantity of products shipped.

4.5. Seller will package and prepare the goods for shipment in accordance with its normal procedures. If Buyer requests or requires any additional packaging or preparation other than in conformity with Seller's normal procedure, Buyer will pay the costs of such additional packaging or preparation, which will be added to and paid in accordance with the purchase price for the goods.

4.6. Seller reserves the right to make delivery in installments. Delay in shipment of any installment shall not relieve Buyer of its obligations to accept remaining shipments or shipments under other orders. Partial shipments will be invoiced as shipped. Payments are due as invoiced.

4.7. If Buyer is unable or unwilling to accept delivery of goods within the period specified under the purchase order, Seller shall have the right to charge Buyer storage charges or all costs of commercial storage, if necessary. In any event, the risk of loss shall pass to Buyer, the Seller shall invoice the Buyer, and balance of all payments due shall be due and payable as if there had been no delay.

4.8. All orders accepted by Seller for shipments outside of the United States shall be subject to compliance with, and Buyer agrees to comply with, all applicable statutes, regulations, and directives of the United States and any other government with jurisdiction.

4.9. Force Majeure. Seller shall not be liable for any delay in delivery or performance, or for any failure to manufacture, deliver or perform due to (a) any cause beyond its reasonable control; (b) any act of God, act of Customer, act of civil or military authority, governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation, or car shortage; or (c) inability on account of any cause beyond the reasonable control of Seller to obtain necessary materials, components, services, or facilities. In the event of any such delay, the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay.

5. Title of Materials and Equipment

5.1. All estimates, negatives, drawings, sketches, films, prints, samples, or other documents included with offers or deliveries, as well as moulds, stamps, and tools, manufactured or furnished by Seller, will remain Seller's property, even if they have been charged for, and will be returned to Seller upon request. None of these items may be copied, duplicated, or be made available to a third party for either perusal or reuse without Seller's written consent.

5.2. Any equipment (including screens, jigs, dies, fixtures, and tools) which Seller constructs or acquires for Buyer, notwithstanding any charges thereof, shall be and remain the property of and in Seller' possession and control, and any amounts paid in connection therewith by the Buyer, shall be considered a service charge. Seller may make such use or disposition of all such equipment as it desires without liability to Buyer. New or additional screens or tools or equipment or changes necessary in screens or tools or equipment to conform to changes in specification ordered by the Buyer are to be paid for by the Buyer. Screens, tools or equipment service charges applicable cover only the useful life of such screens, tools or equipment. Any materials or equipment owned or furnished by Buyer while in Seller' possession will be carefully handled and stored by Seller, but Seller shall have no responsibility for loss or damage thereto.

5.3. Upon written agreement between Seller and Buyer, materials listed in sections 5.1 and 5.2 may be turned over to buyer at said time. Seller will retain no title, ownership or liability over said materials once transfer has been agreed to and transfer has taken place.

6. Cancellation and Alteration

6.1. Requests by the Buyer to cancel or alter an order or to temporarily or permanently stop work or delivery must be made in writing to Seller. Seller reserves the right to accept or refuse any such request and to set the additional charges and other conditions under which a request is granted. Seller's acceptance of any request will only be effective if such request is accepted by Seller in writing and is signed by an authorized officer of Seller. Any such additional charges will be due and payable 7 days after notification to Buyer by Seller.

6.2. All goods or services ordered or held by the Seller either at the Buyer's request or to fulfill the Buyer's order shall be at the risk and expense of the Buyer. If Buyer makes any request to alter or cancel an order, Buyer is responsible for (i) all costs incurred for such goods and/or services, (ii) all labor and service costs incurred to fulfill Buyer's order, and (iii) all costs associated with any open purchase orders for goods or services placed by Seller to fulfill Buyer's order. The Seller, at its option, may invoice the Buyer for all costs in the preceding sentence. Such invoices are due and payable 7 days from issuance.

6.3. Buyer shall have the right by written order to make changes in drawings, designs or specifications, where the goods to be furnished by Seller are to be specifically manufactured for Buyer in accordance therewith, and in the method of shipment, packaging, quantities and delivery schedules. If any such change causes an increase in the cost of or in the time required for performance of an order and/or if such change results in rework and/or obsolescence charges, Buyer shall compensate Seller at minimum for the increase in Seller's cost and for any rework and/or obsolescence charges and the order shall be modified in writing accordingly. The Seller, at its option, may invoice the Buyer for all costs or charges. Such invoices are due and payable 7 days from issuance. In any event, Seller reserves the right to reject any change that it deems unsafe, technically inadvisable, or inconsistent with established engineering or quality guidelines and standards, or incompatible with Seller's design or manufacturing capabilities.

6.4. Seller reserves the right at any time to make changes in design or additions to or improvements in its goods without liability or obligation to install such change, addition, or improvement in any product manufactured prior thereto.

6.5. Seller may cancel an order from Buyer at any time upon (i) a breach by Buyer of these Terms and Conditions of Sale, (ii) a breach by Buyer or any one of Buyer's affiliates of any license agreement between Buyer or any one of Buyer's affiliates and Seller or any one of Seller's affiliates, (iii) a breach by Buyer or any one Buyer's

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affiliates of any agreement between Buyer or any one of Buyer's affiliates and Seller or any one of Seller's affiliates, or (iv) non-payment or late payment by Buyer or any one of Buyer's affiliates of any invoice issued by Seller or any one of Seller's affiliates to Buyer or any one of Buyer's affiliates.

6.6. Either party may cancel an order without liability if the other party becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against the other party under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership, or assignment for the benefit of creditors.

7. Warranty

7.1. Seller warrants its products to be substantially free from defects in materials and workmanship. Seller will replace or repair any products which shall prove to be materially defective, providing the Buyer shall have reasonably inspected products received and notified Seller of any apparent defects within 30 days of receipt of shipment. At Seller's option the Buyer may be credited for the price charged for the defective product in lieu of replacement or repair. This warranty is for the benefit of, and must be exercised directly by, Buyer only, and shall not convey any rights whatsoever to any third party. Seller makes no other warranty, express or implied, and disclaims the existence of any other warranty whether of merchantability, fitness for a particular purpose, non-infringement or otherwise. Seller shall not, in any event, be liable for damages in respect to the sale or use of any products sold hereunder, in any amount greater than the amount of the purchase price received by Seller for such products.

7.2. This warranty does not extend to any of Seller's goods which have been subject to misuse, including use in violation of instructions provided by Seller, accident or improper installation, or storage, maintenance or application, nor does it extend to goods which have been repaired or altered outside of Seller's plant unless authorized in writing by Seller or unless such installation, repair or alteration is performed by Seller.

7.3. Products delivered by Seller shall not be considered as defective if they substantially fulfill the Buyer's performance requirements and are in accordance with approved samples, specifications or drawings.

7.4. No allowance will be granted for any repairs made by Buyer without written consent of Seller.

7.5. Seller shall not, in any event, be liable for any consequential, incidental or special damages or costs or expenses under any circumstances, including but not limited to damage or loss resulting from inability to use the goods, increased operating costs or loss of production, or any other such damages whatsoever.

7.6. The furnishing of advice or other assistance without separate compensation therefor will not subject the Seller to any liability, either in contract, warranty, tort (including negligence), or otherwise.

8. Returns

8.1. No products will be accepted for credit by the Seller if they are substantially in accordance with the product specifications described in the Buyer's purchase order.

8.2. All claims for shortages, differences in the products shipped, or material defects must be made in writing and delivered to Seller within 30 days of receipt of shipment.

8.3. No return shall be shipped to the Seller except after securing written instructions from the Seller. Seller shall have the sole right to determine whether returned articles or parts shall be repaired or replaced. Seller agrees to assume roundtrip transportation costs for materially defective articles or parts in an amount not to exceed normal truck common carrier shipping charges within the continental United States, provided, however, that if Seller's inspection discloses that the returned article or part does not require repair or replacement, Seller's usual charges will apply and the Buyer shall assume roundtrip shipping charges.

8.4. Damage incurred at the Buyer's location such as in the process of inspection, handling, and repackaging shall be the sole responsibility of the Buyer.

9. Patent and Intellectual Property

9.1. Patent and Intellectual Property Infringement. In the event Buyer provides material, specifications, drawings, instructions, or the like, Buyer agrees to defend, protect, and hold harmless Seller from and against any and all suits at law or in equity, and from all damages, claims, and demands for actual or alleged infringement of any United States or foreign patent, and to defend any suit or actions and reimburse all attorneys' fees incurred by Seller in defense of such suits or actions which may be brought against Seller for an alleged patent infringement because of the manufacture and/or sale of the goods in accordance with Buyer's instructions, specifications, drawings, or the like, or use of material provided by Buyer. Further, Buyer will hold Seller free and harmless from, and release and not make claim or suit against Seller because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim or infringement of patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade or of unfair competition resulting from, or occasioned by, Buyer's use, possession, sale, manufacture, or delivery of goods made by Seller to Buyer's instructions, specifications, drawings, or the like. Buyer will notify Seller in writing of the commencement of any suit against Buyer covered by this paragraph. Seller will have the right to participate in any suits or actions described in this paragraph, and no settlement, discontinuance, or judgment may be entered without advising and consulting with Seller.

9.2. Intellectual Property Rights. Seller shall retain all patent, copyright, trade secrets, and other intellectual property rights it possesses with regard to any and all design, process, product, or manufacturing technologies. The design, development or production of product hereunder shall not be deemed to be a "work made for hire," and nothing herein shall be construed to grant to Buyer any right or license in any patent, copyright, trade secret, or any other intellectual property right. Any designs, processes, products, or systems that are developed by Seller concurrently with the work performed hereunder shall be the sole and exclusive property of Seller, and Seller reserves the right to use such designs, processes, products or systems for other customers, or license the use thereof to others.

10. Errors

10.1. Seller reserves the right to correct all typographical or clerical errors which may be present in its prices or specifications.

11. Hazardous Materials

11.1. Buyer acknowledges that the materials covered by this Agreement may be, or become, considered as hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller except as to the accuracy of specific safety information actually furnished by Seller) with any hazard of such materials and their applications and the containers in which such materials are shipped. Buyer agrees to inform and train its employees and its customers as to such hazards. Buyer agrees to hold Seller harmless against any claims by Buyer or its employees or customers based on allegations relating to any such hazards except where such claims are based on failure to meet written specifications or the inaccuracy of specific safety information actually furnished by Seller.

12. Reproduction Rights

12.1. Drawings, specifications, reports, photographs and other data of Seller relating to this order and all proprietary rights and interests therein and the subject matter thereof shall remain the property of the Seller (which term, for purposes of this paragraph only, shall include any and all affiliates of Seller). The Buyer agrees that it will not use the Seller's drawings, specifications, and other materials and information above mentioned for the production or procurement of products covered by this order or any similar product from any other source, or reproduce the same or otherwise appropriate them without the written authorization of the Seller. The Buyer shall cause its employees, agents and others having access to such information to be aware of, and to abide by, the terms of this paragraph.

13. Nondisclosure

13.1. The Buyer agrees that it will not disclose or make available to any unauthorized third party any drawings, data, or other information pertaining to this order which is proprietary to Seller without obtaining Seller's prior written consent. The Buyer shall cause its employees, agents and others having access to such information to be aware of, and to abide by, the terms of this paragraph.

14. Miscellaneous

14.1. Any unenforceable provision shall be reformed to the extent necessary to permit enforcement thereof. The parties both acknowledge that damages at law may be an inadequate remedy for the breach or threatened breach of Paragraph 12 and/or 13 of these terms and conditions and that, in the event of a breach or threatened breach by a party of any provision hereof, Seller's rights and obligations hereunder shall be enforceable by injunction or other equitable remedy, in addition to and not in lieu of any rights to damages at law. This agreement shall be construed in accordance with the laws of the State of Arizona, USA, without regard to conflicts of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms and Conditions of Sale. Changes, amendments or modifications in or additions to any provision contained herein may be made only by a written instrument executed by the parties thereto. All notices and waivers must be by written instrument executed by the party to be bound thereby. Notices are deemed given when received, regardless of the means of transmission. This agreement may not be assigned by Buyer but may be assigned by Seller. The terms and conditions of this agreement exist only for the benefit of the parties to this agreement and their respective successors and permitted assigns. Neither the failure of Seller to require strict performance by Buyer of any term or condition of this agreement, nor any failure or delay by Seller in exercising any right, power or privilege hereunder, shall waive, affect or diminish any right of Seller thereafter to demand strict performance or operate as a waiver thereof. If any provision of this agreement is held to be invalid or illegal, such provision will be severable and the remaining provisions hereof shall not be affected thereby. This agreement may be executed in counterparts, with the same effect as if both parties have signed the same document.