

Echelon Supply and Service
TERMS AND CONDITIONS OF SALE

1. GENERAL The following terms and conditions apply to all sales of goods and services (collectively, "Products") by Echelon Supply and Service ("Echelon", "we", "us" or "our"), to you (the "Customer"), and constitutes the final, complete and exclusive agreement ("Agreement") between you and Echelon relating to the subject matter hereof and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written, relating to such subject matter (including, without limitation, any "Terms and Conditions of Purchase" published by Customer), unless otherwise specifically agreed to in a writing signed by Echelon's authorized representative. Any term or condition in any order, confirmation, or other document furnished by Customer at any time, which is in any way inconsistent with or in addition to the terms and conditions set forth herein is hereby expressly rejected, and Echelon's acceptance of any order of Customer is expressly made in reliance of Customer's assent to all terms and conditions hereof. Customer's acceptance of delivery of any Products constitutes Customer's acceptance of these terms and conditions.

2. PRICE The prices applicable to the Products shall be as quoted by Echelon to Customer and are subject to change. Stenographic and clerical errors are subject to correction. A quotation is not a contractual offer and any order resulting from a quotation is subject to approval and acceptance by Echelon.

3. TAXES Prices listed or quoted do not include any present or future sales, use, excise or similar taxes, duties or other governmental charges, which will be added where applicable and paid for by Customer, unless you provide us with a tax exemption certificate acceptable to the appropriate taxing authorities and presented at or before the time of purchase. No sales tax refunds will be given at any time for any reason. Any taxes paid by Echelon on Customer's behalf shall be reimbursed by Customer upon demand.

4. PAYMENT TERMS Unless otherwise agreed to by Echelon in writing, payment terms shall be net thirty (30) days from the date of invoice. If shipments are delayed by Customer, invoices may be rendered on the date(s) Echelon is prepared to make shipment(s). Any Product held as a result of Customer's inability or refusal to accept delivery is at the risk and expense of Customer. Interest at the rate of one and one-half percent (1 1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid by Customer within thirty (30) days of the due date thereof. Such interest shall be in addition to the purchase price hereunder. In the event Echelon engages a collection agency or commences a legal action or suit to collect the purchase price or any part thereof, Customer shall, in addition to the full purchase price including interest, be liable for all costs and expenses of such legal action or suit (including reasonable attorney's fees). In addition, Echelon reserves the right to require COD payment terms from any customer whose account is overdue for a period of more than 45 days or who has an unsatisfactory credit or payment record. Echelon may also refuse to sell to any person until overdue accounts are paid in full.

5. SHIPPING POINT AND TRANSPORTATION All Products will be shipped F.O.B. point of shipment. Title and risk of loss shall pass to Customer upon delivery of Product(s) by Echelon to the carrier for shipment to the Customer, notwithstanding any prepayment of shipping charges by Echelon, if so required by the carrier. All shipment costs shall be paid by Customer, and if prepaid by Echelon, the amount thereof shall be reimbursed to Echelon.

6. DELIVERY Echelon will make every effort to deliver the Products hereunder in accordance with the requested delivery date, provided that Echelon shall not be liable for any delay in delivery due to causes beyond our reasonable control, such as acts of God, acts of the government, strikes, war, delays of carriers, or inability to obtain necessary material or manufacturing facilities. Echelon shall not be liable for any damages or penalties whatsoever whether direct or indirect, special, incidental or consequential, resulting from our failure or the failure of our suppliers to perform or delay in performing unless otherwise agreed in writing by an authorized officer. Customer agrees that any delay in delivery shall not affect the validity of any orders or these terms and conditions.

7. CHANGES TO ORDERS Unless otherwise agreed to by Echelon in writing, changes in materials, supplies, labor and/or changes made at the request of Customer shall be at the expense of Customer. Changes or alterations made by Customer or made by Echelon (over its recommendation against the same) shall be at Customer's sole risk and responsibility.

8. CANCELLATION OF ORDERS Due to the specialized nature of the Products, orders may be cancelled only with our written consent and upon payment of reasonable cancellation charges, including Echelon's actual out of pocket costs, overhead and anticipated profit (as determined by us). Partial cancellation of an order may result in adjustment of prices for the balance of the order.

9. REJECTION Customer's right to reject any Products supplied hereunder is conditioned upon Customer giving Echelon a written notice of rejection setting forth the basis thereof within ten (10) days after delivery of the Products to Customer. Failure to give such notice within such time constitutes acceptance of such Products. Products may be returned only when authorized by us in writing, and then only on such terms as Echelon may specify. All returned Products shall be returned with shipping prepaid.

10. LIMITED WARRANTIES; DISCLAIMERS

(a) Echelon represents and warrants that the Products delivered by Echelon to Customer shall: (i) conform to agreed-upon specifications for the Product(s), to the extent any specifications were made part of an order; and (ii) be free from faulty workmanship and defective materials. The foregoing warranties shall be limited to a ninety (90) day period commencing on the date of shipment of the applicable Product(s) (the "Warranty Period") provided (i) the Products have been properly cared for (i.e. the Products have not been subject to misuse, neglect, misapplication etc.) and used in accordance with Echelon's instructions, if any, (ii) the Products have not been tampered with or modified

Echelon's prior written approval, and (iii) Customer promptly notifies Echelon in writing of any warranty claim during the Warranty Period. In the event any Product fails to meet either or both of the foregoing warranties, Echelon's sole obligation, in Echelon's sole discretion, shall be to either replace or repair the non-conforming Product. The foregoing warranties provided by Echelon in this Section 10 are the only warranties provided by Echelon with respect to the Product(s) sold hereunder, and may be modified or amended only by a written instrument signed by Echelon. Customer's remedies and Echelon's aggregate liability with respect to the warranties provided by Echelon in this Section 10 are set forth in and limited by this Section 10 and Section 11 below.

(b) Echelon warranties above do not apply to Products not manufactured by Echelon and do not apply to components furnished by third parties. In addition, such warranties shall be for the sole benefit of the original customer only and are not assignable. Echelon shall not be liable for any claim if alterations have been made to the Products by the Customer or others without Echelon's written consent. Any components furnished by third parties are warranted only to the extent of the original manufacturer's warranty to Echelon and then only if such original manufacturer's warranty is assignable to Customer.

(c) THE EXPRESS WARRANTIES OF ECHELON STATED IN SECTION 10(a) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ECHELON'S WARRANTY OBLIGATIONS AND CUSTOMER'S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SECTION 10.

11. LIABILITY Notwithstanding anything to the contrary contained in this Agreement, Echelon's aggregate liability in connection with the sale or use of Product(s) hereunder, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise), shall not exceed the aggregate purchase price for Products paid by Customer to Echelon pursuant to an applicable order. Echelon shall not be liable for any extraordinary, exemplary, special, indirect, consequential or incidental damages of any kind, including without limitation, lost profits, even if Echelon has been advised of the possibility of such damages. Except as provided in Section 10(a) above, and subject to the limitations set forth in Sections 10 and 11 hereof, Echelon shall not be liable for any claims of third parties relating to any use of the Products, and Customer will defend Echelon and hold Echelon harmless against all losses, liabilities, damages, claims and expenses, including, reasonable attorneys' fees arising out of or in connection with the use or sale of Products by Customer or Customer's employees, agents, customers, or contractors. **THE FOREGOING STATES THE ENTIRE LIABILITY OF ECHELON WITH REGARD TO THIS AGREEMENT AND ECHELON'S SALE OF PRODUCT(S) HEREUNDER. THE LIMITATIONS CONTAINED IN SECTIONS 10 AND 11 ARE A FUNDAMENTAL PART OF THE BASIS OF ECHELON'S BARGAIN HEREUNDER, AND ECHELON WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.**

12. WARRANTY BY CUSTOMER Customer hereby represents and warrants to Echelon that any Product(s) built to Customer's specifications, when built, does not and will not infringe any rights of any third party, of any kind or nature. Customer shall indemnify, defend and hold harmless Echelon from all claims of any nature asserted or brought against Echelon resulting from a breach of Customer's warranty hereunder.

13. RETAINED SECURITY INTEREST Until such time as the entire purchase price of the Products have been paid, Customer hereby grants to Echelon a first priority purchase money security interest in the Products supplied pursuant to the terms hereof. The rights and remedies of Echelon, as a secured party with respect to the Products shall be governed by the Uniform Commercial Code, or equivalent statute(s) of the State in which the Products are located. Customer authorizes Echelon to execute and record on behalf of Customer such financing statements and other instruments as Echelon may deem necessary to perfect or protect its security interest in the Products.

14. NOTICES Notices may be delivered by overnight courier or fax, with proof of delivery, or by United States mail, registered or certified mail, with postage prepaid, in each case addressed to the party being notified at such party's address referred to on the face of this contract, or at such other address as such party shall have notified the other party in writing.

15. NOT TRANSFERABLE This Agreement is not transferable or assignable by Customer either directly or by operation of law without the prior written consent of Echelon.

16. HEADINGS Paragraph headings are for convenience only and shall not be construed to define or limit the operative provisions of this Agreement.

17. AMENDMENTS No amendment, change to or modification of this Agreement, or any schedules or attachments hereto, shall be valid unless the same shall be in writing and signed by the party or parties to be charged therewith.

18. APPLICABLE LAW The rights and duties of the parties shall be governed by the laws of the State of New York. The federal and state courts located within Onondaga County, New York shall have exclusive jurisdiction to determine any and all actions and proceedings relating to or arising from this Agreement and the sale of Product(s) hereunder and each party hereby irrevocably consents to the personal and subject matter jurisdiction of such courts with respect thereto.