



## Terms and Conditions of Sale ClearCube Technology, Inc.

- 1. Scope:** The terms and conditions of sale contained herein in this sales acknowledgment (“Sales Acknowledgement”) shall constitute the entire agreement between ClearCube Technology, Inc. (“Seller”) and Buyer and supersedes all purchase orders and related prior communications and agreements. Seller’s acceptance of Buyer’s order is expressly conditioned upon Buyer’s acceptance of these terms and conditions. No waiver, alteration, or modification, no matter how slight, of any the provisions hereof shall be binding unless in writing, signed by a duly authorized representative of Seller and any purported waiver, alteration or modification without Seller’s written consent is hereby rejected. In the event of a conflict between the provisions of the face of this Sales Acknowledgment or quotation which is annexed and made a part hereof, and these terms and conditions, then the terms and conditions on the face of this Sales Acknowledgment or quotation shall govern.
- 2. Acceptance of Orders:** All orders or contracts must be approved and accepted in writing by an authorized representative of Seller at Seller’s office in Austin, Texas. The validity of this order, as well as its interpretation, operation and effect shall be determined exclusively by the principles of the law of the State of Texas.
- 3. Acceptance of Goods:** Buyer shall inspect the goods delivered hereunder immediately upon their arrival and shall within five (5) days of their arrival give written notice to Seller of any claim that the goods do not conform with the terms of this Sales Acknowledgment. If Buyer shall fail to give such notice, the goods shall be deemed to conform, and Buyer expressly waives any rights it may have to revoke acceptance after such five (5) day period. Upon issuance by Seller of a Return Materials Authorization for a proper rejection of goods, Buyer shall promptly return such goods to Seller at Seller’s risk and expense. Upon receipt of the rejected goods, Seller will promptly ship replacement goods to Buyer.
- 4. Prices:** Seller’s prices do not include any taxes, freight, handling, duty or other similar charges; payment of which will be the sole responsibility of Buyer. If applicable, Buyer shall provide Seller with a tax-exemption certificate acceptable to the taxing authorities. All payments shall be made in U.S. dollars in the United States.
- 5. Terms of Payment:** Invoices are due and payable net thirty (30) days from the date of Invoice. Failure to make any payment due under the terms of this Sales Acknowledgement shall constitute a material breach and such past due balance will be subject to interest at the monthly rate of one and one-half percent, or if less, the maximum rate permitted by law. Seller reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment by reason of Buyer’s creditworthiness or should Buyer fail to fulfill any obligation when due.
- 6. Delivery:** All shipping dates are approximate and subject to change. Unless otherwise specified in this Sales Acknowledgment, delivery shall be F.O.B Seller’s plant in Austin, Texas. The method of shipment and carrier shall be selected by Seller unless Buyer shall have specified in writing a method of shipment and carrier ten (10) days prior to shipment. In all cases, Buyer assumes risk of loss or of damage to goods in transit and it shall be Buyer’s responsibility to file claims with the carrier. If Buyer desires insurance of valuation greater than the minimum on the shipment, it shall so notify Seller in writing ten (10) days prior to the scheduled shipment and the same shall be an additional cost to Buyer. If no such notice is received, shipment shall be made without insurance except where shipment is subject to released valuation ratings, in which case shipment will be made at the lowest rating.

**7. Reschedule:** Buyer may reschedule orders that are scheduled for delivery at least thirty-one (31) days from receipt by Seller of Buyer's written notice.

**8. Cancellation:** Buyer may not cancel its order to which this Sales Acknowledgment applies without the prior written approval of Seller. If Buyer is permitted to cancel such order, in whole or in part, Buyer shall be liable for cancellation charges. In such event, Buyer shall be liable for product scheduled for delivery during the sixty (60) days for standard products and ninety (90) days for all other ("Non-standard") products following the effective date of termination. Buyer shall also be liable for any additional finished goods, work-in-progress, and other costs incurred on behalf of Buyer as of the effective date of termination including but not limited to tooling, material or supplies on order ("Additional Costs") for all Non-standard products. A handling charge of 20% will be added to the Additional Costs. Seller will apply commercially reasonable effort to mitigate the amount of additional costs incurred on behalf of Buyer.

**9. Excusable Delay:** Seller shall not be liable for delays in delivery or failure to manufacture or deliver due to acts of God, acts of Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, war, riot, delays in transportation, car shortages, power outages or other causes beyond Seller's reasonable control including, but not limited to, obtaining necessary labor, material, components, or manufacturing facilities.

**10. Patents:** If the products which are the subject hereof are to be produced according to Buyer's specifications, Buyer guarantees that the manufacture, sale and/or use of such items will not infringe on United States or foreign patents, trade secrets or other intellectual property rights and agrees to indemnify and save Seller harmless from any expense, loss, cost, damage or liability which may be incurred on account of infringement or alleged infringement of such rights with respect to such items, and to defend, at its own expense, any action or claim in which such infringement is alleged. If this order calls for delivery of Seller's standard products, without modification, Seller agrees (i) to assume the defense of any suit brought against Buyer for infringement of United States Letters Patent arising solely from use and/or sale of said standard products; (ii) to defray the expense of such defense; and (iii) to indemnify Buyer against any money damages and/or costs awarded in such suit provided (1) that Seller be given exclusive control of the defense of such suit and all negotiations relative to the settlement thereof and (2) that Buyer promptly inform Seller in writing of any claims with respect to which Seller assumes responsibility hereunder. The foregoing states the entire liability of Seller for intellectual property infringement.

**11. Designs, Specifications, Material Furnished by Buyer:** Seller assumes no responsibility for the performance of the products manufactured to Buyer's design or specifications or for defects in raw material parts or subassemblies furnished by Buyer.

**12. Limited Warranty:** Seller warrants that all items will be delivered free from defects in material and workmanship and in conformance with this Sales Acknowledgment. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, SELLER DOES NOT WARRANT THE USE, OR THE RESULTS OF THE USE, OF THE PRODUCTS OR SERVICES. The warranties provided herein do not apply to products that are altered or modified, other than by Seller, or to products that are not maintained to Seller's maintenance recommendations or are not operated within Seller's recommended guidelines.

**13. Limitation of Liability:** Seller's exclusive liability for breach of the warranty contained in Section 12 hereof shall be limited to repairing or replacing at Seller's option, defective items returned, under a Return Materials Authorization number provided by Seller, at Buyer's expense within one (1) year from the date of delivery. Products returned to Seller which are determined by Seller to be (1) not covered by warranty and (2) beyond reasonable repair shall not be returned to Buyer but shall be disposed of within thirty (30) days of Seller's mailing a notice of this intended disposal. Seller shall, wherever feasible, follow any reasonable instructions from Buyer for disposition of said items at Buyer's expense.

SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE FOR LOSS OR DAMAGES ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS SALES ACKNOWLEDGEMENT, OF FROM THE PERFORMANCE OR BREACH HEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY ITEM OR SERVICES COVERED BY OR FURNISHED UNDER THE SALES ACKNOWLEDGEMENT SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE ITEM OR SERVICE OR PART FURNISHED BY SELLER THEREOF WHICH GIVES RISE TO THE CLAIM. IN THE EVENT SELLER ATTEMPTS BUT FAILS TO MANUFACTURE OR DELIVER ORDERED ITEMS, SELLER'S EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY SHALL BE RELEASE OF BUYER FROM THE OBLIGATIONS TO PAY THE PURCHASE PRICE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Seller certifies that to the best of its knowledge and belief, it will comply with all relevant federal, state and local laws, including the applicable provisions of the Fair Labor Standards Act. Except as herein expressly provided to the contrary, the provisions of this Sales Acknowledgement are for the benefit of the parties to this Sales Acknowledgement and not for the benefit of any other party. An assignment of this Sales Acknowledgement or any rights hereunder by Buyer, except to an agency or department of the United States, without written consent of Seller shall be void.

**14. Software License and Warranty:** License Grant. Subject to the terms and conditions set forth in this Sales Acknowledgment, Company grants Buyer a limited, non-exclusive and non-transferable license to use the software comprising any component of any Product (including software contained in firmware embedded in a Product) ("Software") in object code form only and solely as a component incorporated in the Product, distributed to its end-user customers (together with Company's standard End User License Agreement). All copies of the Software are licensed and not sold. As between the parties, Company retains all title to (except as expressly licensed by Company), and rights (including all intellectual property and proprietary rights anywhere in the world) and the interest in the Software. License Restrictions. Buyer shall not, nor permit others to (i) copy, modify or create any derivative work of the Software or include the Software in any other software or with any other product, (ii) transfer or sublicense its rights to any other person, or use the Software with unauthorized equipment; (iii) delete, alter or obscure any copyright or other notice or proprietary legend appearing in the Software or on any documentation, media, master or package materials for the Software provided by Company or (iv) reverse assemble, decompile, reverse engineer or otherwise attempt to derive the source code (or the underlying ideas, structure, sequence, organization or algorithms) from the Software.

**15. Disputes:** Any claim, controversy or dispute concerning questions of fact or law arising out of or relating to this Sales Acknowledgement, shall be decided by the authorized representative of Seller. The decision of Seller shall be final and conclusive unless within thirty (30) days of receipt of such copy Buyer mails or otherwise furnishes to the American Arbitration Association, with a copy to Seller, a written demand for arbitration. The claim, controversy or dispute shall then be arbitrated pursuant to the rules of the American Arbitration Association and will be conducted in or near Austin, Texas. Costs and expenses of such arbitration shall be born equally by the parties unless otherwise provided by the arbitrators.

**16. Export Control:** All products, literature and specifications produced by Seller are of a technology controlled for exports by the United States Department of Commerce and as such require a validated export license from that body prior to the exportation beyond the boundaries of the United States of America, its territories or possessions. Buyer agrees to obtain such export licenses, and to comply with the U.S. Foreign Corrupt Practices Act and all export laws, as applicable.