

Z-COMMUNICATIONS, INC.
TERMS AND CONDITIONS OF SALE

- 1. PURCHASE ORDERS.** All purchases from Z-Communications, Inc. ("Z-Comm") shall be governed exclusively by these terms and conditions of sale ("T&Cs"). No agreement for the supply of products or services will exist until Z-Comm provides its quote, order acknowledgement and these T&Cs. Z-Comm objects to any purchase orders, order forms, acknowledgement forms or other documents issued by buyer which may contain terms in addition to or at variance with these T&Cs, and it is expressly understood that such documents shall not add to or vary these T&Cs. These T&Cs apply in lieu of any course of dealing between the parties or usage of trade in the industry.
- 2. PAYMENT.** For all invoices, Pre-payment is required, unless otherwise agreed to in writing. Payment terms of Net 30 days or longer may be established for qualifying customers, subject to Credit review and approval by Z-Comm. Past due balance may be subject to a monthly service charge of one and one-half percent (1-1/2%) of the balance past due. All fees and charges are the responsibility of the buyer. No discounts are authorized. If deliveries are made in installments, each installment shall be separately invoiced and paid for when due without regard to other deliveries. If buyer fails to make payment for goods delivered as herein provided, or, if in Z-Comm's opinion, buyer's financial condition or other circumstances do not warrant shipment on the terms originally specified in any contract made hereunder, Z-Comm may at any time limit or cancel the credit of buyer as to time and amount and may demand payment in cash for delivery of any part of the product. On any order on which credit is not extended by Z-Comm, shipment of delivery shall be made at Z-Comm's election as follows: cash with order (in whole or part), a letter of credit in a format acceptable to Z-Comm, or a wire transfer of funds to Z-Comm's bank. The net invoice price shall be payable in U.S. funds.
- 3. PRICES/TAXES.** All prices quoted by Z-Comm are exclusive of federal, state and local excise, sales, use and similar taxes and all export duties and other export costs. Such taxes, when applicable to sales or to the product, will appear as separate additional items on the invoice, or in lieu thereof, the buyer shall provide Z-Comm with a properly executed tax exemption certificate prior to delivery. Buyer shall bear the expense of any and all of the foregoing taxes and export duties and costs.
- 4. DELIVERY.** All deliveries will be made in accordance with the delivery terms designated on the front of Z-Comm's order acknowledgement. Z-Comm may make deliveries in installments with appropriate partial invoicing issued therefore. Delivery dates stated by Z-Comm represent its best estimate of when the products will be shipped. Z-Comm is not liable for losses or added costs due to delivery delays. Z-Comm reserves the right to allocate inventories and production when such allocation becomes necessary. **IN NO EVENT WILL Z-COMM BE LIABLE FOR ANY PREMIUM TRANSPORTATION, RE-PROCUREMENT, OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS) DUE TO ANY FAILURE TO DELIVER OR DELAY IN DELIVERY HOWEVER CAUSED.**
- 5. TITLE AND SECURITY.** Unless otherwise specified in writing by the parties, title and risk of loss to products sold hereunder shall pass to buyer upon delivery of such products to a commercial carrier at Z-Comm's point of shipping. Z-Comm reserves a purchase money security interest in the products in the amount of the purchase price of such products to secure buyer's obligations hereunder. Buyer will cooperate with Z-Comm to do all acts deemed necessary or advisable by Z-Comm to perfect and protect Z-Comm's security interest in the products.
- 6. WARRANTY. Z-COMM WARRANTS THAT THE PRODUCTS SOLD HEREUNDER WILL BE IN ACCORDANCE WITH THE WRITTEN SPECIFICATIONS, WILL BE THE KIND AND QUALTY DESCRIBED IN THE AGREEMENT AND WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE WHEN CORRECTLY INSTALLED AND MAINTAINED FOR A PERIOD OF ONE YEAR FROM THE DATE OF Z-COMM'S DELIVERY TO BUYER F.O.B. Z-COMM'S POINT OF SHIPPING.** Z-Comm's warranty is limited solely, at Z-Comm's discretion, to: replacing, repairing, or issuing credit for products that become defective during the warranty period. In the event that any products become defective during the warranty period, buyer shall (A) notify Z-Comm during the warranty period in writing of any claims and (B) provide Z-Comm with an opportunity to inspect and test the product claimed to be defective. Z-Comm shall not be liable for any allegedly defective products if Z-Comm reasonably determines that the defective condition of such products was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. In no event shall Z-Comm be responsible for de-installation or reinstallation of any product or for the costs thereof. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR OTHER WARRANTY OF QUALITY, WHETHER EXPRESSED OR IMPLIED.**
- 7. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE HEREIN, Z-COMM SHALL NOT BE LIABLE TO BUYER, OR TO ANY THIRD PARTY CLAIMING UNDER THE BUYER, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, REMOTE, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE PRODUCTS, BY BUYER OR ITS CUSTOMERS, BY THE PERFORMANCE OR FAILURE OF Z-COMM TO PERFORM, BY ANY OTHER ACT OR OMISSION OF Z-COMM, OR BY ANY OTHER CAUSE, FURTHER IN NO EVENT WILL Z-COMM'S TOTAL LIABILITY TO BUYER, OR TO ANY THIRD PARTY CLAIMING UNDER THE BUYER, FOR ANY CAUSE, EXCEED THE SUM PAID TO Z-COMM BY BUYER FOR THE PRODUCTS SOLD HEREUNDER WHICH GIVE RISE TO THE CLAIM IN THE THREE MONTHS IMMEDIATELY PRECEDING A CLAIM OR DEMAND BY BUYER.**
- 8. INFRINGEMENT.** No representation is made that the products or their use do not infringe on any patents, trademarks or trade names or other rights of third parties. Buyer hereby releases and agrees to hold Z-Comm harmless from any and all claims by buyer related to any such infringement. Buyer shall indemnify Z-Comm for any loss, resulting from the infringement of a patent, trademark, copyright, or any other right of a third party, because of Z-Comm's compliance with specifications furnished by buyer. Buyer, upon Z-Comm's written demand, shall defend any action brought against Z-Comm for infringement at buyer's sole cost and expense.
- 9. BANKRUPTCY.** If buyer shall become bankrupt or insolvent or compounds with his creditors or commences to be wound-up or suffers a receiver to be appointed, Z-Comm shall have the right to give buyer written notice and immediately cancel this agreement and any pending sales hereunder, without judicial intervention or declaration of default of buyer, and without prejudice to any right or remedy that shall have accrued or shall accrue thereafter to Z-Comm.
- 10. FAILURE TO EXERCISE NOT DEEMED WAIVER.** The failure by Z-Comm to enforce at any time any of the provisions of this agreement, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provisions or option, nor in any way to affect the validity of this agreement or any part thereof, or the right of Z-Comm thereafter to enforce each and every such provision.
- 11. ATTORNEY'S FEES.** Reasonable attorney's fees and cost shall be awarded to the prevailing party in the event of litigation, arbitration or any other proceeding involving the enforcement or interpretation of this agreement or any request for shipment release issued and accepted under the terms and conditions of this agreement.
- 12. APPLICABLE LAWS.** The Laws of the State of California and the federal copyright, trademark and patent laws of the United States of America shall govern this agreement and its interpretation. Any action or arbitration brought to enforce any rights hereunder shall be brought within the State of California, County of San Diego. Any action involving exclusive federal jurisdiction shall be brought in the United States District Court for the Southern District of California. Buyer expressly consents and submits to the jurisdiction of said courts.
- 13. SALE CONVEYS NO LICENSE.** The products are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license, express, implied, by estoppels or otherwise, under any patent claim with respect to which Seller can grant licenses covering complete equipment, or any assembly, circuit combination, method or process in which any such products are used as components. Seller expressly reserves all its rights, if any under such patent claims.
- 14. DATA AND PROPRIETARY RIGHTS IN DATA.** Portions of the data supplied with the products sold hereunder are proprietary to Z-Comm. Z-Comm retains to itself all proprietary rights in and to all designs, engineering details, and other data pertaining to any product sold hereunder save and except for those particular circumstances whereby said rights are assigned, licensed, or transferred pursuant to a separate written agreement executed by a duly authorized officer of Z-Comm.
- 15. CONFIDENTIAL INFORMATION.** No information related to any product sold hereunder shall be deemed to be given or received in confidence by either Z-Comm or buyer, unless and only to the extent such information is the subject of separate written agreement executed by both parties.
- 16. LIMITATIONS OF ACTIONS.** The parties expressly agree that NO ACTION FOR ANY BREACH OR ANY OTHER CLAIM RELATED TO THIS AGREEMENT FOR THE SALE OF PRODUCTS SHALL BE COMMENCED MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THERETO, IRRESPECTIVE OF WHETHER ANY LONGER PERIOD OF TIME IN WHICH TO BRING CLAIMS MAY OTHERWISE BE AFFORDED TO THE PARTIES UNDER CALIFORNIA OR ANY OTHER JURISDICTIONS' LAWS.
- 17. ASSIGNMENT.** Buyer shall not assign this agreement or any interest herein, or any rights hereunder without the express written consent of Z-Comm.
- 18. EXPORT CONTROL.** Buyer shall comply with the US Foreign Corrupt Practices Act and all export laws, and restrictions and regulations of the Department of Commerce, and the United States Department of Treasury Office of Foreign Assets Control, and buyer agrees not to sell or deliver to those areas to which delivery would be forbidden under US law or regulations pertaining thereto.
- 19. Construction of Agreement.** This agreement shall be construed according to its fair meaning. It is further agreed that this agreement is not to be construed against any one party, but has been drafted for the benefit of all parties to this agreement and reviewed by each such party.
- 20. No Third Party Beneficiaries.** Nothing in this agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this agreement on any persons other than the parties hereto.
- 21. ENTIRE AGREEMENT.** These T&Cs and Z-Comm's Order Acknowledgement, and where applicable the Distributor or Reseller Agreement, embody the entire agreement between the parties hereto and supersede all other agreements whether written or oral between the parties in connection with the products and services sold or provided hereunder. These T&Cs cannot be modified, supplemented, or rescinded except in writing and signed by both parties.