



General Terms & Conditions: Sellers

The following, together with the attachments appended hereto constitutes the Terms and Conditions for the contract between the Seller and WB Industries ("Buyer"), and acceptance is strictly limited to the terms and conditions contained herein. Additional or differing terms, conditions or limitations of liability proposed by Seller, whether in a quote, acceptance or delivery document shall have no effect unless accepted in writing by Buyer. In particular, any limitation of liability or disclaimer of warranty is expressly rejected. Agreement by Seller to furnish the goods or services to these terms and conditions, or Seller's commencement of such performance or acceptance of payment shall constitute acceptance by Seller of these Terms and Conditions.

1. **PAYMENT:** Buyer will make timely payments on undisputed amounts after the later of (i) Buyer's receipt of a valid invoice, or (ii) Buyer's acceptance of the Goods and Services. Seller will not invoice Buyer until the Goods have been delivered or the Services rendered, unless prior arrangements have been made with Buyer in writing. Unless otherwise stated on the order, the prices for the Goods and Services on the order are complete and include purchase price, taxes, shipping (for international shipments, to port of entry), packaging, labeling, storage and insurance, but do not include, for international shipments, customs duties or shipping from port of entry to destination.
2. **DELIVERY & ACCEPTANCE:** All shipping, completion and delivery dates are firm. Shipment of Goods will be FOB Destination, or as otherwise specified on the order. Seller must suitably pack or otherwise prepare for shipment all Goods to prevent damage in transit. Seller will ensure that all packaging and labeling complies with the laws of the destination jurisdiction. Seller must comply with all carrier requirements. Goods must be classified to secure the lowest possible shipment, insurance and duty rates. Buyer may test or inspect all Goods or Services delivered, but Buyer's inspection, testing or payment (or lack of inspection, testing or payment) is not an acceptance of Goods or Services or a waiver of any right or warranty and does not preclude Buyer from rejecting defective Goods or Services.
3. **CONFIDENTIALITY:** All information relating to this order is "Buyer Confidential Information." Seller may only use and copy the Buyer Confidential Information to perform its obligations under this order. Seller will not disclose Buyer Confidential Information to any third party without the prior written consent of Buyer. Upon cessation of work, or upon request, Seller must return all documents and other materials that contain or relate to Buyer Confidential Information. Buyer Confidential Information does not include information that is: (i) rightfully known by Seller prior to negotiations leading to this order; (ii) independently developed by Seller without reliance by Seller on the Buyer Confidential Information; or (iii) part of the public domain or is lawfully obtained by Seller from a third party without any confidentiality violation.
4. **WARRANTIES AND CERTAIN COVENANTS:**
 - a. Seller warrants and covenants that all Goods and Services delivered: (i) do and will conform with the Buyer order and all specifications; (ii) are and will be free from defects in materials, workmanship and design; (iii) are and will be free from liens, restrictions, reservations, security interests or encumbrances; (iv) are and will be suitable for, and perform in accordance with, the particular purposes (A) for which they were purchased by Buyer and (B) for which they were designed, manufactured or constructed; (v) do and will, to the extent the Goods will be or are used in combination with other Buyer software, hardware or firmware, property interoperate with Buyer's software, hardware or firmware; and (vi) with respect to Services only, will be provided by individuals who have the expertise, skills, training and professional education to perform the Services in a professional manner.
 - b. Seller will, at Buyer's request and without additional expense to Buyer, promptly correct defects or replace non-conforming Goods or Services, at Buyer's sole discretion. If Seller does not promptly correct defects or replace non-conforming Goods or Services when so

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requested, Buyer, after written notice to Seller, may make corrections or replace Goods and Services and charge Seller for the cost incurred.

- c. Seller warrants that neither the Goods nor Services, nor Buyer's use of the Goods or Services, will constitute an infringement of any patent, copyright, trademark, service mark, intellectual property right or the misappropriation of any trade secret or the violation of a right of publicity or a nondisclosure obligation.
 - d. Seller warrants that the Goods and Services requiring the use of any software or data provided on a network or stand-alone desktop computer will not contain any software viruses or other malicious computer instructions, devices or techniques that can or were designed to threaten, infect, damage, disable or shut down a computer system or any component of a computer system, including its security or user data. At Buyer's request, Seller will provide a master copy of any software necessary to operate the Goods or Services in object code format for comparison and correction.
- 5. INDEMNIFICATION AND INSURANCE:**
- a. Seller agrees to indemnify and defend Buyer, Buyer's affiliates, and their respective customers, officers, employees, and agents against any third party claim, demand, suit, cause of action, liability, loss or expense (including reasonable attorneys' fees) brought against any Buyer indemnitee resulting from (i) any act or omission of Seller under this order (including injury to persons and loss of, or damage to, tangible and intangible property, (ii) the inaccuracy of any warranty or representation made by Seller, or (iii) the infringement of any patent, copyright, trademark, service marks, intellectual property right or Seller's misappropriation of any trade secret or violation of any right of publicity or nondisclosure obligation.
 - b. If the purchase or Buyer's use of the Goods or Services is enjoined, Seller must, at its own expense and at Buyer's sole option, (i) replace the Goods or Services with non-infringing goods or services, (ii) modify the infringing Goods or Services so the infringement is removed, or (iii) refund the purchase price of the infringing Goods or Services.
 - c. Throughout its performance under this order, Seller agrees to maintain policies of insurance that include, but are not limited to, general commercial liability insurance covering its performance under this order with a limit of at least \$1,000,000 per occurrence, worker's compensation insurance sufficient to comply with applicable law, and automobile insurance with bodily injury and property damage combined single limited of at least \$1,000,000.
- 6. OWNERSHIP:**
- a. Seller must promptly disclose and assign to Buyer all intellectual property generated, conceived or developed under this order, including but not limited to: proprietary information, inventions conceived or reduced to practice as a result of this order, and any resulting patents. Any works of authorship in any form of expression, including, but not limited to, manuals and software developed under this order, are works for hire and belong exclusively to Buyer, if, by operation of law, the ownership of works for hire does not automatically vest in Buyer, Seller hereby assigns and agrees to assign ownership to Buyer. Seller will provide reasonable assistance to Buyer to secure intellectual property protection, including, but not limited to, assistance in the preparation and filing of any patent applications, copyright registrations, and the execution of all applications, assignments or other instruments for perfection or protection of title. Seller will pay its employees any compensation due in connection with the assignment of any intellectual property or invention. Seller warrants to Buyer that Seller's employees are subject to agreements that will secure Buyer's rights under this section.
 - b. For intellectual property, including software, provided under this order, but not owned by Buyer under Section 6 a), Seller grants to Buyer a fully paid-up, worldwide, perpetual license to install, execute, use, copy, test, display, perform and distribute such intellectual property for Buyer's business purposes, including the provision of managed services, webhosting services and application service provider and application infrastructure provider services.

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7. **TERMINATION:** Buyer may at any time terminate for convenience further performance of all or part of this order by giving written notice to Seller. If Seller, for any reason, fails to ship or deliver Goods or perform Services within the times specified in this order, Buyer may, without liability (except for Goods or Services previously delivered and accepted), terminate this order in whole or in part, by written notice to Seller, and Seller will be liable to Buyer for damages that Buyer incurs due to non-performance, including the excess cost for substitute Goods or Services.
8. **LIMITATION OF LIABILITY:** Buyer will not be liable for special, indirect, consequential (including, but not limited to, lost profits), special, exemplary or punitive damages arising out of or relating to this order. Buyer's liability for any claim of any kind arising out of or relating to this order will not exceed the price of the Goods or Services giving rise to the claim.
9. **CHOICE OF LAW:** This order and the rights and obligations of the parties are governed by the laws of the State of Missouri (USA) without regard to its conflict of laws, but this order and the rights and obligations of the parties will not be governed or interpreted in any way by referring to any law based upon or similar to the Uniform Computer Information Transactions Act (UCITA) or the United Nations Convention on Contracts for the International Sale of Goods (UNCISG).
10. **WAIVER OF JURY TRIAL; VENUE:**
 - a. Each party waives its right to a jury trial in any court action arising among the parties, whether under this agreement or otherwise related to this agreement, and whether made by claim, counterclaim, third party claim or otherwise.
 - b. Except to the extent necessary for Buyer to enforce indemnity or defense obligations under this Agreement, any court proceeding brought by either party must be brought, as appropriate, in state court located in St. Charles County, Missouri, or in the United States District Court for the Eastern District of Missouri in St. Louis, Missouri. Each party agrees to personal jurisdiction in either court. The prevailing party in any formal dispute will be entitled to reasonable attorney's fees and costs, including reasonable expert fees and costs.
11. **COMPLIANCE WITH LAWS:** Seller will comply with all applicable laws and regulations. Seller will take all precautions to prevent injury to persons or property damage and adhere to Buyer's security procedures.
12. **GOVERNMENT CONTRACTS:** For each Subcontract awarded in support of and charged to a U.S. Government Contract, the provisions found in Supplement – U.S. Government Contract Provisions from the FAR and DFARS shall apply along with any other applicable and mandatory flow-downs required by the FAR or DFARS or any other federally published Supplement. All such appended FAR, DFARS, or other clauses are incorporated by reference as if set forth at length herein. Seller agrees that all such clauses that under applicable law must flow-down to lower tier subcontractors of Buyer shall so flow-down to Seller's subcontractors.
13. **CONFLICT MINERALS:** All materials provided under this order must be free of conflict minerals from Covered Countries in accordance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. For all Sellers who provide product to Buyer containing Tantalum (and all its derivatives), Tin, Tungsten, or Gold, Seller shall complete EICC Conflict Minerals Reporting Template (common survey) found at <http://www.conflictreesmelter.org> and perform due diligence on its supply chain in order to fulfill the reporting obligations of this article.
14. **COUNTERFEIT PARTS PREVENTION:**
 - a. For purposes of this clause, Work consists of those parts delivered under this Contract that are the lowest level of separately identifiable items (e.g., articles, components, goods, and assemblies). "Counterfeit Work" means Work that is or contains items misrepresented as having been designed and/or produced under an approved system or other acceptable method. The term also includes approved Work that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable.
 - b. Seller agrees and shall ensure that Counterfeit Work is not delivered to Buyer.
 - c. Seller shall only purchase products to be delivered or incorporated as Work to Buyer directly from the Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM), or through an OCM/OEM authorized distributor chain. Work shall

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not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer.

- d. Seller shall immediately notify Buyer with the pertinent facts if Seller becomes aware or suspects that it has furnished Counterfeit Work. When requested by Buyer, Seller shall provide OCM/OEM documentation that authenticates traceability of the affected items to the applicable OCM/OEM.

15. GENERAL:

- a. Seller will not, without Buyer's prior written consent, make any news release, public announcement, denial or confirmation of this order, its value, or its terms. Nothing in this order grants Seller the right to use any trademarks, service marks, tradenames or logos proprietary to Buyer. If Seller is granted a right to use Buyer marks, Seller will do so only in strict compliance with Buyer's guidelines.
- b. No change, amendment or modification of this order will be effective unless in writing and signed by authorized representatives of Buyer and Seller.
- c. Seller will not, without Buyer's prior written consent, assign all or any part of this order.
- d. Failure by Buyer to insist upon strict performance by Seller of any of its obligations under this order will not waive any subsequent or other default or failure to perform by Seller.
- e. Buyer's rights and remedies in law or equity are cumulative and may be exercised concurrently or separately.
- f. The invalidity, in whole or in part, of any provision of this order will not affect the validity of any other provision.
- g. Time is of the essence in Seller's performance.
- h. Seller is an independent contractor and not an agent or employee of Buyer or any of Buyer's affiliates. Seller is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claims by Seller's employees.
- i. Seller will not subcontract any portion of this order without Buyer's prior written consent.
- j. Buyer has the right to offset any amount owed by Seller to Buyer against any amount owed by Buyer to Seller under this order.
- k. Seller must provide product change notices to Buyer. All documents related to this order must be sent to Buyer at Procurement Dept., 1270 West Terra Lane, O Fallon, Missouri (USA) 63366 or faxed to 636-272-2368.

16. **ENTIRE AGREEMENT; CONFLICTS:** This order and any attachment constitute the entire agreement between the parties as to Goods or Services and supersede all previous representations, statements, negotiations, commitments and writings relating to the Goods and Services. If there is a conflict between this order and any other document related to the Goods or Services, the terms of the documents will control in the following order: (a) master or other written agreement between Buyer and Seller signed by an authorized representative of Buyer; (b) printed order terms; (c) supplemental terms set forth on the front and (d) other documents incorporated into this order by reference.