

# Microhard Systems Inc. Terms and Conditions

## 1. Prices

A. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not part of the original price quotation.

B. Prices are exclusive of all federal, provincial, state, municipal, or other government excise, sales, use, occupational or like taxes, tariffs, customs, duties and importing fees. Prices are consequently subject to increase by the amount of any such tax, tariff, duty or fee which Microhard Systems Inc. pays or is required to pay or collect upon sale or delivery of products. Any certificate of exemptions or similar document of proceeding required to exempt the sale of products from sales or use tax liability shall be obtained the by Buyer, at its expense.

## 2. Terms of Payment

Terms are cash upon delivery, except where satisfactory open credit is established, in which case terms of payment are net thirty (30) days from the date of invoice.

Microhard Systems Inc. reserves the right at anytime to revoke any credit extended to the Buyer for any risk deemed good and sufficient by Microhard Systems Inc.

Microhard Systems Inc. will issue invoices on delivery in the case of all products; and if deliveries are authorized in installments, each shipment shall be invoiced and paid when due without regard to other scheduled deliveries. Overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1.5% per month (18% per year). Amount owed by the Buyer with respect to which there is no dispute shall be paid without set-off for any amount which the Buyer may claim are owed by Microhard Systems Inc. when due, without set-off for the amount which the Buyer may claim is owed by Microhard Systems Inc. and regardless of any other controversies which may exist.

## 3. Delivery

A. All products will be shipped FOB Point of Origin

B. Ownership of, and risk of loss with respect to, the products shall pass to Buyer upon delivery thereof by Microhard Systems Inc. to Buyer or to a carrier for shipment to Buyer, whichever is earlier, regardless of whether Microhard Systems Inc. will install or supervise the installment of the products. Buyer hereby grants to Microhard Systems Inc. a security interest in the products as security for the performance by the Buyer of all obligations hereunder

C. Products held or stored by Microhard Systems Inc. for the Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense to Microhard Systems Inc. of holding or storing products at Buyer's request.

D. Microhard Systems Inc. shall make deliveries in installment and shall bill partial shipments as made.

E. All products will be scheduled for shipment in accordance with Microhard Systems Inc. applicable shipment sequence and Microhard Systems Inc. will confirm in writing, and amend as appropriate, the shipment schedule. Under no circumstance shall Microhard Systems Inc. be liable to Buyer for any delay either in shipment of or in delivery of any product.

## 4. Non-Recurring Engineering Charges

A. Non-recurring engineering charge ("NRE Charge") may be imposed for any special design work that Microhard Systems Inc. may perform at Buyer's request in order to manufacture or acquire the Products to Buyer's specifications. Such special design work and any and all designs, drawings and other items related thereto shall be and remain Microhard Systems Inc.'s sole property notwithstanding payment of any NRE Charge therefore by Buyer. In no event will Buyer acquire any right or interest whatsoever in any such design work, designs, drawings and other items, and Buyer agrees that Microhard Systems Inc. shall have the sole and exclusive right to utilize such design work, designs, drawings and other items, including (without limitation) in connection with products that Microhard Systems Inc. may manufacture or acquire for customers other than Buyer.

B. A deposit of the entire NRE is required unless otherwise specified on the quotation for the NRE. Deposits are non-refundable not withstanding Non-conformity.

C. NRE are special order (non-standard products), built to Buyer's specifications or pursuant to Microhard Systems Inc.'s design, Buyer shall have no right to cancel or reschedule the delivery of any such non-standard products.

D. The Buyer shall have 30 calendar days after the delivery of the NRE work to notify Microhard Systems Inc. of any Non-conformity to the specifications. After which time the NRE work is deemed completed and to have met all specifications.

E. If Microhard Systems Inc. is unable to meet the required specifications for the NRE, then Microhard Systems Inc. shall have the sole right to cancel the NRE project and refund the deposit collected. IN NO EVENT WILL MICROHARD SYSTEMS INC. BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, BUSINESS INTERRUPTION, CATASTROPHIC, PUNITIVE OR OTHER DAMAGES WHICH MAY BE CLAIMED TO ARISE IN CONNECTION WITH THE HARDWARE, REGARDLESS OF THE LEGAL THEORY BEHIND SUCH CLAIMS, WHETHER IN TORT, CONTRACT OR UNDER ANY APPLICABLE STATUTORY OR REGULATORY LAWS, RULES, REGULATIONS, EXECUTIVE OR ADMINISTRATIVE ORDERS OR DECLARATIONS OR OTHERWISE, EVEN IF MICROHARD SYSTEMS INC. HAS BEEN ADVISED OR OTHERWISE HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND TAKES NO ACTION TO PREVENT OR MINIMIZE SUCH DAMAGES. IN THE EVENT THAT REGARDLESS OF THE WARRANTY DISCLAIMERS AND HOLD HARMLESS PROVISIONS INCLUDED ABOVE, MICROHARD SYSTEMS INC. IS SOMEHOW HELD LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY, MICROHARD SYSTEMS INC.'S LIABILITY FOR ANY DAMAGES SHALL NOT EXCEED THE PROFIT REALIZED BY MICROHARD SYSTEMS INC. ON THE SALE OR PROVISION OF THE HARDWARE TO THE CUSTOMER.

## 5. Source Inspections

Source inspection by Buyer or Buyers' customers must be stipulated in writing, at the time of ordering, and is subject to reasonable charges, safety and security conditions. Buyer shall have no right of access to Microhard Systems Inc.'s plant except as specifically authorized in advance by Microhard Systems Inc. Buyer or Buyer's agent shall indemnify and hold Microhard Systems Inc. harmless from any and all suits, damages, and expenses of Buyer, his agents or his customer resulting from personal injury including death or loss or damage of property occurring during, or in connection with, any visit to Microhard Systems Inc.

## 6. Shipment

Unless specific instructions to the contrary are supplied by the Buyer, Microhard Systems Inc. will select the carrier and ship the products to the Buyer's address indicated on the Buyer's purchase order. Microhard Systems Inc. will not assume any liability in connection with the shipment nor constitute any carrier as its agent. Buyer shall be responsible for making all claims with carriers, insurers, warehouses and others for non-delivery, loss, damage or delay. All claims for damage to the product or shortage must be made within thirty (30) days of shipment.

## **Microhard Systems Inc. Terms and Conditions**

### **7. Office/Acceptance**

Microhard Systems Inc. offers to sell and deliver the products and services specified herein in accordance with the terms and conditions hereof. This offer expressly limits acceptance to the terms hereof and any additional or different terms proposed by the Buyer are hereby objected to and rejected unless expressly assented to in writing by Microhard Systems Inc.

### **8. Cancellation, Rescheduling and Returns**

Any request for order cancellation, rescheduling or returns must be made in writing and such action must be approved in writing by an authorized agent of Microhard Systems Inc. at its principal office in Calgary, Alberta. Such requests are subject to processing charges as outlined below. No cancellations, quantity decreases or push-outs can be made for orders due to ship within 8 weeks of scheduled delivery.

#### **A. Cancellation Charges**

If a Buyer cancels the delivery of any products, the cancellation must be received 19 weeks from the scheduled shipment date. For cancellations received 0 to 18 weeks from scheduled shipment date, the Buyer shall pay to Microhard Systems Inc. 100% of the purchase order, in addition to any charges for unearned discounts (bill back). For non-standard products, built to Buyer's specifications or pursuant to Microhard Systems Inc.'s design, Buyer shall have no right to cancel or reschedule the delivery of any such non-standard products.

#### **B. Returns**

Buyer shall not return any products for any reason without prior authorization of Microhard Systems Inc. and issuance of a Return Material Authorization (RMA) number. The RMA number shall be valid for 30 days and shall specify the terms and conditions upon which returns may be made. Returns made without obtaining prior authorization shall be returned to sender at the Buyer's expense.

#### **C. Returns for Credit**

Microhard Systems Inc., at its option, may accept or reject any request by Buyer to return product for credit. If authorization is granted Buyer shall pay Microhard Systems Inc. a restocking fee equal to 35% of the current list price for standard products for each product(s) returned, in addition to charges for unearned discounts, and any other reasonable charges. Buyer shall not return material without first obtaining an RMA number as stated herein.

### **9. Installation**

Microhard Systems Inc. assumes no obligation to install the products or to place them in operation at the Buyer's premises, unless specifically stated in writing by an authorized agent of Microhard Systems Inc.

### **10. Warranty**

Microhard Systems Inc. warrants that each product will be free of defects in material and workmanship for a period of one (1) year for its products. The warranty commences on the date the product is shipped by Microhard Systems Inc. Microhard Systems Inc.'s sole liability and responsibility under this warranty is to repair or replace any product which is returned to it by the Buyer and which Microhard Systems Inc. determines does not conform to the warranty. Product returned to Microhard Systems Inc. for warranty service will be shipped to Microhard Systems Inc. at Buyer's expense and will be returned to Buyer at Microhard Systems Inc.'s expense. In no event shall Microhard Systems Inc. be responsible under this warranty for any defect which is caused by negligence, misuse or mistreatment of a product or for any unit which has been altered or modified in any way. The warranty of replacement shall terminate with the warranty of the product.

### **11. Warranty Disclaims.**

Microhard Systems Inc. makes no warranties of any nature of kind, expressed or implied, with respect to the hardware, software, and/or products and hereby disclaims any and all such warranties, including but not limited to warranty of non-infringement, implied warranties of merchantability for a particular purpose, any interruption or loss of the hardware, software, and/or product, any delay in providing the hardware, software, and/or product or correcting any defect in the hardware, software, and/or product, or any other warranty. The Purchaser represents and warrants that Microhard Systems Inc. has not made any such warranties to the Purchaser or its agents MICROHARD SYSTEMS INC. EXPRESS WARRANTY TO BUYER CONSTITUTES MICROHARD SYSTEMS INC. SOLE LIABILITY AND THE BUYER'S SOLE REMEDIES. EXCEPT AS THUS PROVIDED, MICROHARD SYSTEMS INC. DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PROMISE.

### **12. Proprietary Rights**

The Buyer hereby acknowledges that Microhard Systems Inc. has a proprietary interest and intellectual property rights in the Hardware, Software and/or Products. The Purchaser shall not (i) remove any copyright, trade secret, trademark or other evidence of Microhard Systems Inc.'s ownership or proprietary interest or confidentiality other proprietary notices contained on, or in, the Hardware, Software or Products, (ii) reproduce or modify any Hardware, Software or Products or make any copies thereof, (iii) reverse assemble, reverse engineer or decompile any Software or copy thereof in whole or in part, (iv) sell, transfer or otherwise make available to others the Hardware, Software, or Products or documentation thereof or any copy thereof, except in accordance with this Agreement.

### **13. Indemnification**

Unless otherwise expressly provided in writing signed by both parties, Microhard Systems Inc. does not indemnify, nor does it hold Buyer harmless, against any liability, losses, damages and expenses (including legal fees) relating to any claim whatsoever, including without limitation, claims for personal injuries, death or property damage related to the products sold hereunder.

### **14. Substitutions and Modifications of Specifications**

Microhard Systems Inc. assumes the right to make substitutions and modifications in the specifications of any of the products or parts thereof designed by Microhard Systems Inc. provided such substitutions or modifications will not materially affect the performance of such products. Microhard Systems Inc. shall have the right to enhance the product and/or the firmware. Microhard Systems Inc. has no obligation to upgrade any units sold to the Purchaser.

## **Microhard Systems Inc. Terms and Conditions**

### **15. Assignment**

This contract is not assignable by Buyer and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

### **16. Force Majeure**

Microhard Systems Inc. shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay due to any cause or event beyond Microhard Systems Inc.'s control, including, without limitations, acts of nature, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labour difficulties, delays in transportation, delays in delivery or defaults by Microhard Systems Inc.'s vendors or acts or omission of the Buyer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and the Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of one-hundred-twenty (120) days, Microhard Systems Inc. or Buyer shall have the right by written notice to the other to cancel the order for the products subject to the delayed delivery without further liability of any kind.

### **17. Limitation of Liability**

IN NO EVENT WILL MICROHARD SYSTEMS INC. BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, BUSINESS INTERRUPTION, CATASTROPHIC, PUNITIVE OR OTHER DAMAGES WHICH MAY BE CLAIMED TO ARISE IN CONNECTION WITH THE HARDWARE, REGARDLESS OF THE LEGAL THEORY BEHIND SUCH CLAIMS, WHETHER IN TORT, CONTRACT OR UNDER ANY APPLICABLE STATUTORY OR REGULATORY LAWS, RULES, REGULATIONS, EXECUTIVE OR ADMINISTRATIVE ORDERS OR DECLARATIONS OR OTHERWISE, EVEN IF MICROHARD SYSTEMS INC. HAS BEEN ADVISED OR OTHERWISE HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND TAKES NO ACTION TO PREVENT OR MINIMIZE SUCH DAMAGES. IN THE EVENT THAT REGARDLESS OF THE WARRANTY DISCLAIMERS AND HOLD HARMLESS PROVISIONS INCLUDED ABOVE MICROHARD SYSTEMS INC. IS SOMEHOW HELD LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY, MICROHARD SYSTEMS INC.'S LIABILITY FOR ANY DAMAGES SHALL NOT EXCEED THE PROFIT REALIZED BY MICROHARD SYSTEMS INC. ON THE SALE OR PROVISION OF THE HARDWARE TO THE CUSTOMER.

### **18. Waivers**

All rights and remedies of Microhard Systems Inc. hereunder shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any term herein and the other party shall not enforce that term, failure to enforce on that occasion shall not prevent enforcement on any other occasion.

### **19. Governing Law**

This Contract is made in, governed by and shall be construed in accordance with the laws of the Province of Alberta. If the products purchased hereunder are purchased by a Buyer residing in a country other than Canada, then parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from this Contract.

### **20. Exports**

Buyer certifies that it will not export or re-export the products furnished hereunder unless it complies fully with all liens and regulations of United States relating to such export.

### **21. Entire Agreement and Amendments**

The terms and conditions herein, constitutes the entire Contract between the parties and supersede all previous communications, whether oral or written. Any changes to this contract may be made only upon the mutual agreement of the parties in writing.

### **22. Use in Life Support Applications**

Products sold by Microhard Systems Inc. must never be used in life applications or equipment. Any Buyer who uses or sells Microhard Systems Inc. products for use in life support applications does so at the Buyer's own risk and agrees to indemnify and hold harmless Microhard Systems Inc. from any and all damages, claims, suits or expense resulting from such use.