

TERMS AND CONDITIONS OF SALES

1. PRICES AND TAXES

All prices quoted and invoiced are exclusive of all freight and federal, state and local taxes, fees or charges now in force or enacted in the future. Such charges shall be the sole responsibility of Buyer, unless otherwise agreed in writing.

2. DELIVERY

Deliveries will be made F.O.B. origin as determined by Seller. The time of delivery is the time the goods to be delivered are picked up by a common carrier. Title to the goods shipped hereunder and risk of loss and damage shall pass from Seller to Buyer upon delivery of the goods to a common carrier F.O.B. Seller's facility. Seller reserves for itself, and Buyer grants to Seller, a security interest in all products purchased from Seller to secure the full payment and performance by Buyer of its liabilities and obligations hereunder. Buyer shall keep the products in good order and repair until the purchase price has been paid in full and shall promptly pay all taxes and assessments upon the products or use of the products.

3. SHIPMENT

In the absence of specific shipping instructions, Seller will ship by the method it deems most advantageous in standard commercial packaging. Transportation charges will be collected on delivery or, if prepaid, will be subsequently invoiced to Buyer. Buyer is obligated to obtain insurance against damage to the goods being shipped. Buyer shall bear complete and exclusive responsibility for promptly advising the carrier and insurer of any loss or damage and for filing claims against, and recovering any sums owed by the carrier or the insurer. If special or export packaging is requested or, in Seller's opinion, required under the circumstances, the cost of the same, if not set forth on the invoice will be separately invoiced.

4. TERMS OF PAYMENT

(a) Invoices shall be due and payable within thirty (30) days from date of invoice, until, Seller in its sole discretion at any time revokes credit approval, or deems itself insecure, at which time all amounts shall become immediately due and payable. Accounts unpaid when due shall accrue late charges of one and one-half percent (1.5%) per month or, if lower, the maximum rate allowed by law. Seller reserves the right at any time and for any reason to require payment in advance or C.O.D., or otherwise to modify, suspend, or terminate any credit terms previously extended to Buyer. If Seller believes in good faith that Buyer's ability to make any payment required hereunder is or may be impaired, Seller may cancel this contract (or any remaining balance thereof), and Buyer shall remain liable to pay for any products previously shipped.

(b) All payments shall be made in U.S. dollars.

5. DATA AND PROPRIETARY RIGHTS IN DATA

Buyer acknowledges that (i) the products sold by Seller hereunder contain trade secrets belonging to Seller or licensor of Seller; (ii) the products sold by Seller hereunder are proprietary to Seller or licensor of Seller, and Buyer shall not disassemble, decompile or otherwise reverse engineer the products or otherwise attempt to learn the source code structure, algorithms, or ideas underlying the products.

6. SALE CONVEYS NO LICENSE

The goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey and license, expressly or by implication, estoppel 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 goods are used as components. Seller expressly reserves all its rights under such patent claims.

7. LIMITED WARRANTY

(a) Seller agrees to pass through TO BUYER ONLY the warranty, if any, originally provided to Seller by the manufacturer franchise agreement with Cranel, provided that Buyer has given Seller immediate written notice of such defect and has returned the defective goods or component within the required warranty period. Buyer shall pay the cost of returning the defective goods to Seller and Seller shall pay the cost of regular return shipping back to Buyer in the event the goods prove not to be defective or are not subject to warranty protection because of misuse, lapse of time or other reasons. Buyer will be charged for repair or replacement services at Seller's standard rates.

(b) Products or parts that have been subject to abuse, misuse, accident, alteration, neglect, unauthorized repair or installation are not covered by warranty. Seller will make the final determination as to the existence and cause of any alleged defect. No warranty is made with respect to custom equipment or products produced to Buyer's specifications except as may be specifically set forth in writing by Seller in a separate contract for such custom equipment.

(c) Seller's products are not designed for use in medical or life support applications, devices or systems where malfunction of a product can reasonably be expected to result in a personal injury. Buyer and its customers using or selling products for use in life support applications do so at their own risk and agree to fully indemnify Seller for any damages resulting in such improper use or sale.

(d) Buyer may return to Seller any Products that do not comply with the above warranty, provided that (i) Buyer obtains a return material authorization ("RMA") from Seller prior to returning the Product, and (ii) the Product is returned within 30 days of the warranty period provided herein. Any Product so returned to Seller shall be promptly repaired or replaced, or the purchase price therefor refunded or credited, at Seller's option. This shall be the Buyer's sole and exclusive remedy for any breach of any warranty provided in the Agreement.

(e) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, SELLER MAKES NO OTHER WARRANTIES, STATUTORY, EXPRESSED OR IMPLIED, WITH RESPECT TO PRODUCTS OR SERVICES SUPPLIED UNDER THIS AGREEMENT AND DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NONINFRINGEMENT.

8. LIMITATION OF LIABILITY

(a) Seller will not be liable for any loss, damage or penalty resulting from failure to perform or delay due to causes beyond the reasonable control of Seller, including but not limited to

supplier delay, force majeure, act of God, labor unrest, flood, fire, explosion, earthquake, or by excess demand for its products. In any such event, the delivery date will be deemed extended for a period equal to the delay. SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY RESULTING FROM SELLER'S INABILITY TO PROCURE PRODUCT FROM ITS SUPPLIERS.

(b) IN NO EVENT WILL SELLER BE LIABLE UNDER ANY CONTRACT, TORTS, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR (A) DAMAGES IN EXCESS OF THE PURCHASE PRICE OR OF SUCH LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD-PARTY CLAIMS AGAINST BUYER. IN NO EVENT WILL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY BUYER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. SUBSTITUTIONS AND MODIFICATIONS

Seller will have the right to make substitutions and modifications in the specifications of products sold by Seller provided that such substitutions or modifications will not materially affect overall product performance.

10. EXPORT LAWS AND RESTRICTIONS

Buyer agrees to comply with all export laws and restrictions and regulations of the Department of Commerce or other United States or foreign agency or authority and not to export or allow the export or re-export of any materials or items deliverable by Seller in violation of any such restrictions, laws or regulations, or to Afghanistan, the People's Republic of China or any Group Q, S, W, Y or Z country specified in the then current Supplement No. 1 Section 370 of the U.S. Export Administrations Regulations (or any successor supplement or regulations).

11. DEFAULT AND CANCELLATION

In the event of Buyer's default in payment for the products purchased hereunder, Buyer shall be responsible for all reasonable costs and expenses incurred by Seller in any such breach by Buyer, Seller elects to continue to make shipments, such shipments shall not constitute a waiver of any breach by Buyer or in any way affect Seller's legal remedies arising from such breach. Should Buyer elect to cancel its order, Buyer shall be liable to Seller for reasonable cancellation charges which shall include without limitation all costs and expenses incurred by Seller in connection with producing and filling Buyer's order, which shall not exceed the actual sales price of the products cancelled. If Buyer becomes bankrupt or insolvent, or files or has filed against in any petition in bankruptcy, or makes an arrangement for the benefit of its creditors, or suffers a receiver or similar party to be appointed, Seller shall be entitled to cancel this contract without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which shall have accrued or shall thereafter accrue to Seller.

12. ENTIRE AGREEMENT

The terms and conditions set forth herein constitute the entire agreement between Seller and Buyer. No addition to, deletion from, or modification of, and of the provisions of this contract shall be binding upon Seller unless acknowledged in writing and accepted by an officer of Seller. Any change made by Seller will be deemed accepted by Buyer unless within 10 days from the date Seller delivers notice of such change Buyer notifies Seller in writing of Buyer's objection to such change. This contract may not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of the contract by its express terms. Buyer hereby acknowledges that he has not entered into the agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set for herein.

13. ASSIGNMENT

This contract shall bind and inure to the benefit of Seller successors and assigns, including without limitation, any entity into which Seller shall merge or consolidate. Buyer may not assign any of Buyer's rights or obligations under this contract without Seller's prior written consent. Any attempted assignment, delegation, or transfer by Buyer without such consent of Seller shall be void.

14. WAIVER

The failure by Seller to enforce at any time any of the provisions of this contract or to exercise any election or option provided herein will not in any way be construed as a waiver of such provision.

15. APPLICABLE LAW

This contract will be governed by the laws of the State of Ohio as applied to agreements among Ohio residents entered into and to be performed entirely within Ohio.

16. JURISDICTION AND VENUE

The parties agree that the exclusive jurisdiction and venue of any action with respect of this contract shall be the state courts of Ohio (or if there is federal jurisdiction, the United States District Court of Ohio).

17. ATTORNEYS FEES

Buyer will pay all costs and expenses incurred by Seller incidental to or in any way relating to Seller's enforcement of Buyer's obligations hereunder, including but not limited to (1) costs arising if Buyer's account is referred to an outside collection agency for collection, and (2) reasonable attorney's fees, expenses and court costs, whether arising prior to the commencement of litigation or after, and regardless of whether litigation is commenced by Buyer or Seller.

18. CERTIFICATE OF CONFORMANCE

The undersigned certifies that all articles included in each shipment under the above Purchase Order are in accordance with said Purchase Order and with all requirements, specifications and drawings referenced therein.