

TERMS AND CONDITIONS OF SALE OF PARTSSOURCE, LLC

Dated January 1, 2007

1. **OFFER AND ACCEPTANCE; ENTIRE AGREEMENT** – The terms and conditions of sale are incorporated by reference into all sales made by PartsSource, LLC (the “Seller”) for the Buyer’s purchase of any and all equipment, parts, components and other personal property (the “Goods”) being sold by the Seller to the Buyer hereunder and shall supersede all prior understandings, transactions and communications, whether written or oral, with respect to the matters referred to herein and form the complete contract between the Seller and Buyer, and shall be binding upon and accrue to the benefit of the successors and assigns to the parties hereto. SELLER’S ACCEPTANCE OF ANY OFFER MADE BY BUYER SHALL BE EXPRESSLY CONDITIONAL ON BUYER’S ASSENT TO THESE TERMS AND CONDITIONS. Any modification, alteration, amendment, additional or conflicting term contained in Buyer’s order form or other written communication, is hereby rejected and shall not be binding upon Seller unless agreed to in writing by Seller. The terms and conditions contained herein may be modified or cancelled by Seller at any time prior to acceptance by Buyer.
2. **PRICES** – Prices are FOB Seller’s facility or its vendor’s facility, whichever is applicable, and do not include federal, state or local taxes imposed on the Goods or its sale or use; such taxes, if any, shall be paid by Buyer in addition to the price invoiced. If Seller is required to prepay any such tax or fee, Buyer will reimburse for the same. Buyer must provide Seller with a resale/exemption certificate in order to avoid the withholding of applicable taxes. All terms of payment shall be specified by Seller in writing and shall be made in good funds (U.S. Dollars) without set-off or deduction, or if no terms of payment are specified, within thirty (30) days of the invoice date. If the Goods are ready for shipment on or after the scheduled shipment date and the Goods cannot be shipped because of Buyer’s request for delay, or for any other reason beyond Seller’s reasonable control, payment shall be made upon notification to the Buyer that the Goods are ready for shipment, or as otherwise specified by Seller in writing. Seller may decline at any time either to accept an order, or to ship the same, until Seller has received payment. Unpaid balances shall bear interest from the due date at the rate of 1.5% per month not to exceed the legal limit. Buyer agrees to pay reasonable costs, including reasonable attorneys’ fees, incurred by Seller to collect any amounts due hereunder. Buyer may not withhold or set-off any payment because of any dispute or claim against the Seller.
3. **DELIVERY** – Unless otherwise specified on the face hereof, delivery of the Goods described herein shall be FOB Seller’s or Seller’s vendor facility, whichever is applicable, freight prepaid or freight collect to destination. If shipped prepaid, the charge for freight will be added to the invoice. Seller will use all reasonable diligence to meet the scheduled dates for shipment and delivery, but cannot guarantee any delivery or completion date. Seller shall not be liable for any loss, damage, expense or charge of any kind resulting from delay in shipment or delivery.
4. **TITLE AND RISK OF LOSS OR DAMAGE** – Despite any agreement with respect to delivery terms or prepayment of transportation or insurance charges, the risk of loss or damage shall pass to Buyer and delivery shall be deemed to be complete upon delivery to a private or a common carrier or upon moving into storage, whichever occurs first, at the point of shipment. Title to Goods sold shall remain in Seller until paid for in full.
5. **INSPECTION/ACCEPTANCE OF GOODS** – Buyer shall be responsible for inspecting all Goods prior to acceptance; provided, however, that if Buyer shall not have given Seller written notice of rejection within five (5) days following receipt by Buyer, the Goods shall be deemed to have been accepted by Buyer.
6. **WARRANTY** – Seller warrants to the Buyer that the Goods shall be free from defects in material and workmanship for the warranty period as specified on Seller’s Order Acknowledgement for the Goods (which warranty period shall commence from the date of shipment of the Goods). All warranty claims must be made by written notice to Seller within the specified warranty period. This warranty is contingent on the following: that Buyer establishes that the Goods have been properly installed, maintained and operated within the limits of their related and normal usage; that upon Seller’s request, Buyer will return to Seller at Buyer’s expense and subject to Seller’s direction any defective Goods or parts thereof; and that Seller promptly receives written notice of any defect which is subject to verification by return of the Goods to Seller at Buyer’s expense or inspection by an authorized representative of Seller at Seller’s option. Parts or components replaced under the terms of this warranty are covered for the remainder of the original warranty term. If Buyer, after delivery, shall modify, alter, substitute or change any of the Goods acquired from Seller, then Seller’s warranty with respect thereto shall be null and void and of no force and effect whatsoever. This warranty does not extend to: i) defects due to misuse, abuse, neglect, ii) Goods not used in accordance with normal operating and maintenance instructions, iii) damage caused by corrosion or erosion, iv) damage to Goods subject to wear and tear, v) damage caused by Buyer’s failure to provide a suitable installation environment for the Goods, vi) damage caused by use of the Goods for purposes other than those for which they were designed, vii) damage caused by disasters such as fire and other casualties, viii) damage during shipment, and ix) parts or components not manufactured by Seller (but any manufacturer’s warranties of such Goods will be passed through Seller to Buyer if allowable).
7. **EXCLUSIVE REMEDY** – Should any failure that conforms with the applicable warranties appear during the specified warranty period under normal and proper use and provided the Goods have been properly stored, installed, operated and maintained and if given prompt written notice by Buyer and Seller has been given five (5) days to inspect said Goods before any corrective actions are taken, then Seller shall correct such nonconformity by, at its option, (1) repair or replacement of the nonconforming Goods or parts thereof, or (2) refund of the purchase price for such Goods. This warranty shall not apply to any Goods or parts thereof which: (1) have been improperly repaired or altered, (2) have been subjected to misuse, negligence or accident, (3) have been used/operated in a manner contrary to Seller’s instructions or specifications, or (4) result from normal wear and tear. Any repair or alteration without Seller’s

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written approval shall act to void any existing warranty. Buyer also agrees to defend, indemnify and hold Seller harmless from and against all claims, liabilities, litigation, damages, costs and expenses (including reasonable attorneys' fees related to personal injury (including death), property damage or otherwise, which may be sustained by Buyer, its agents, employees or any third-parties related to or resulting from the use, operation or sale of the Goods supplied by Seller.

8. **DISCLAIMER** – THE FORGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, PERFORMANCE AND DESIGNS, WRITTEN, ORAL OR IMPLIED, AND ALL OTHER WARRANTIES INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM THE COURSE OF DEALING OR USAGE OF TRADE ARE HEREBY EXPRESSLY DISCLAIMED BY SELLER AND ALL GOODS MANUFACTURERS.
9. **LIMITATION OF LIABILITY** – IN NO EVENT SHALL SELLER, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS BE LIABLE TO BUYER NOR TO ANY THIRD-PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE, COST OF CAPITAL, COST OF SUBSTITUTION, DOWNTIME COSTS, DELAYS NOR FOR ANY PENALTIES, WHETHER ANY SUCH CLAIM FOR THE SAME IS BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. SELLER'S LIABILITY FOR ANY SUCH CLAIMS OR FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY DESIGN, SALE, INSTALLATION, OPERATION OR USE OF THE GOODS, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID TO SELLER BY BUYER FOR THE SPECIFIC GOODS OR PART THEREOF.
10. **GOODS EXCHANGES** – If an item(s) is sold on an "EXCHANGE" basis, the Buyer must return a like, repairable item. **Cloned probes are not an acceptable unit.** Such exchange return must be received by Seller within fifteen (15) days from the original date of shipment. Failure to return a like, repairable item or returned after the above fifteen (15) day period will result in additional billing of up to the full OEM replacement cost.
11. **GOODS RETURN POLICY** – If you are returning an item for restocking, you **MUST OBTAIN PRIOR APPROVAL from Seller** within five (5) days of the original date of shipment and before returning the item. Such returns must be received by Seller within ten (10) days from the original date of shipment. Any item returned to Seller for credit (purchased but not used – used items cannot be returned) shall be subject to a 25% restocking charge. Items that have been returned without authorization or returned after the above ten (10) day period will not be accepted for credit and Buyer will be responsible for the full invoiced price.
12. **FORCE MAJEURE** – Seller shall not be liable for any delay in performance or nonperformance which is due to war, fire, flood, fire, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, or similar or dissimilar causes beyond its reasonable control including, but not limited to those interfering with production, supply or transportation of the Goods or components, or Seller's ability to obtain, on terms it deems reasonable, labor, parts, equipment or transportation expense, acts or omissions of third-parties, or cause of action resulting from personal injury or property damage.
13. **INDEMNIFICATION INFRINGEMENT** – If Goods supplied by the Seller are used by the Buyer to infringe or such use is alleged to infringe any patent, copyright, or other intellectual property right, or if Goods supplied by the Seller pursuant to Buyer's designs or specifications infringe or are alleged to infringe any patent, copyright or other intellectual property right, the Buyer shall indemnify, defend and save Seller harmless from and against all damages, liabilities and costs incurred or suffered by it as a result of such infringement or allegation of infringement.
14. **GENERAL**
 - (a) **Complete Agreement** – This agreement supersedes all prior agreements and understandings, oral or written, relating to the Goods and constitutes the entire agreement between the parties related to the Goods.
 - (b) **Amendments; Modifications** – No amendments or modifications of this agreement shall be binding or effective unless in writing and signed by both parties.
 - (c) **Severability** – If a provision of the agreement is held to be invalid or unenforceable, the agreement shall continue in full force and effect and shall be construed as if the invalid or unenforceable provision was omitted.
 - (d) **Waiver** – No waiver of any breach of the agreement shall be construed as a waiver of any prior, concurrent, or subsequent breach hereof.
 - (e) **Governing Law** – This agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding its conflicts of law provisions. Buyer agrees that all causes of action under this agreement shall expire unless brought in a court of law located in Summit County or Cuyahoga County, Ohio, to which Buyer does hereby consent to jurisdiction, within one (1) year of the date of the occurrence of the event giving rise to any such claim.
 - (f) **Assignment** – Neither this agreement nor any rights or benefits hereunder are assignable by Buyer without the prior written consent of Seller. Any such prohibited assignment shall be null and void.
 - (g) **Attorneys' Fees** – In the event that Seller is the prevailing party in any action, proceeding or arbitration between Seller and Buyer concerning the interpretation, and/or enforcement of any of the terms or provisions of the agreement, Buyer shall be liable to Seller for all costs, including reasonable attorneys' fees, incurred by Seller with respect to such action, proceeding or arbitration.