

I. Offer and Contract.

This writing constitutes an offer by GANTNER Technologies Inc. ("Seller") to sell the product(s) and/or services described herein (the "Products") in accordance with these terms and conditions ("T&Cs"). It is not an acceptance of any offer made by buyer ("Buyer"). Acceptance by Seller of Buyer's order is expressly made conditioned on assent to these T&Cs, either by written acknowledgment or by conduct of Buyer that recognizes the existence of a contract ("Contract") with respect to the Products described on Seller's written acknowledgement. No additional or different terms of conditions will be binding upon Seller unless specifically agreed to in writing; failure of Seller to object to provisions contained in any purchase order or other communication from a Buyer shall not be construed as a waiver of these T&Cs nor an acceptance of any of such provisions. These T&Cs supersede all prior written and oral statements between Seller and Buyer, including prior representations, statements, conditions, warranties or Buyer orders. Unless otherwise specified on the face hereof, this offer is subject to written acceptance of Buyer's order by Seller at its principal place of business in Westlake Village, California, within 30 days. These T&Cs also serve as notice of Seller's objection to and rejection of any terms and conditions of purchase or sale included in Buyer's order or other writing that are different from or additional to these T&Cs. Article headings herein are for convenience only and are not to be considered in interpreting any of the provisions herein.

II. Delivery and Risk of Loss and Licenses.

1. Delivery of Products to Buyer's principal place of business or to any other shipping point, if so agreed to by the parties in writing, shall constitute delivery to Buyer ("Delivery"), and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall upon Delivery, shift to Buyer.

2. Buyer shall provide to Seller written, detailed shipping instructions within a reasonable time prior Delivery. Buyer will be responsible for any increased costs or delays in Delivery resulting from Buyer's failure to supply such instructions in a timely manner. Buyer may not withhold payment in the event of delay caused by Buyer.

3. Delivery dates specified are approximate and are subject to revision at any time. Seller will use its commercially reasonable efforts to meet the approximate delivery date(s) provided that Buyer supplies all necessary information, but Seller shall not be held responsible for failure to do so, and shall not be liable for any damage or loss of whatever kind arising directly or indirectly out of any delay in such delivery. If Buyer is responsible for any shipment delay, Seller's written notification to Buyer that Products ordered hereunder are ready for shipping shall constitute Delivery to Buyer, and all further risk of loss or damage as well as all costs for handling, transportation and storage shall be borne by Buyer.

4. Seller shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including without limitation, any act of God, act or failure to act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, act of terrorism, weather, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. It is Buyer's sole responsibility to pay for and to obtain any governmental or other licenses, certificates or documentation as may be required.

III. Storage. If the Products are not shipped within 15 days after notification to Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including, without limitation, Buyer's failure to give shipping instructions, Seller may store such Products at Buyer's sole risk in a warehouse or other storage facility or upon Seller's premises and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore by Seller.

IV. Suspension and Cancellation.

1. If Buyer shall omit delivery instructions or instructions concerning work commencement or shall fail to accept Delivery or allow work to be done or shall fail to make any payment when

it becomes due or shall commit any other breach of contract, and if Buyer shall fail to remedy the same within 7 days of receiving Seller's request in writing to do so, or if Buyer shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of Buyer, or if Buyer shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if Buyer shall pass a resolution for winding up or if a court shall make an order to that effect or if Buyer shall have a receiving order made against it, then at Seller's sole option Seller may defer or cancel any further deliveries or services and treat the Contract or any other contract between Seller and Buyer as terminated, but such termination shall be without prejudice to Seller's right to any unpaid price for goods or materials delivered or cost of work done under the Contract and to damages for loss suffered in consequence of such termination.

2. Following Seller's acceptance of the order, the same may not be cancelled by Buyer without Seller's written consent. Upon such consent, the following payments shall become due to Seller:

(a) The Contract price for all Products completed or services performed at the time of receipt of Buyer's request for cancellation.

(b) For work in progress, order entry expense, engineering process expense and any materials and supplies procured by Seller or for which Seller is committed in connection with Buyer's order a sum equal to the actual cost thereof, together with overhead expenses determined by Seller in accordance with generally accepted accounting principles plus 15%.

(c) If Buyer has received any price discounts due to the quantity of goods ordered, but has not purchased the applicable quantity at the time of cancellation, Buyer must also pay Seller the difference between the price Buyer paid and the price it would have paid had Seller's price been based on the quantity actually purchased.

3. Seller shall suspend the performance of the Contract upon receipt of Buyer's written request to do so but only for a period not exceeding 28 days and Buyer shall reimburse Seller for all storage charges and other additional costs Seller incurs thereby. In the event of the suspension as aforesaid continuing for a period in excess of 28 days, then Seller may terminate the Contract and the rights and liabilities of the parties thereto shall be the same as if the Contract had been cancelled in accordance with the provisions of Article IV, Section 2 of these T&Cs.

V. Prices and Payment.

1. If the Products are shipped from Seller's principal place of business or from any other source within the U.S.A., the quoted price is Seller's principal place of business in Westlake Village, California, or the source of shipment, whichever is applicable unless otherwise agreed upon in writing. If the Products are shipped from outside the U.S.A., the quoted price is port of entry, U.S.A. unless otherwise agreed in writing.

2. The quoted price of Products does not include duty, tariffs, taxes, freight costs or similar charges, which shall be borne by Buyer, unless otherwise agreed upon in writing. All prices are subject to change prior to Seller's issuance of a written acknowledgement. For all prices and Products Seller reserves the right to make adjustments due to changing market conditions, product discontinuation, or other extenuating circumstances.

3. Buyer shall be responsible for any packing, insurance and shipping charges of domestic shipments of Products and Buyer shall reimburse Seller for any such charges paid by Seller, unless otherwise agreed upon in writing.

4. Unless otherwise specified on the face hereof, the terms of payment of the total price, plus any additions (the "Quoted Price") for the Products ordered hereunder shall be as follows:

(a) 50% of the Quoted Price shall be paid upon receipt of Seller's acknowledgement.

(b) 50% of the Quoted Price is due within 30 days after Delivery; in the event that Delivery is delayed due to reasons beyond the reasonable control of Seller the balance is due within one month after Seller's notice that the primary parts of the Products are ready for shipping.

TERMS AND CONDITIONS OF SALE

issued by GANTNER TECHNOLOGIES INC.



5. Overdue amounts shall bear a delinquency charge of interest at the higher of 18% per annum or the maximum rate permitted by law.

6. Buyer shall have no right of set-off with alleged counter-claims. Any assignments of Buyer's counter-claims to a third party without Seller's prior written consent shall be void.

7. Buyer agrees to reimburse Seller for any costs and expenses (including reasonable attorney's fees) in connection with the collection of any amounts owed to Seller under this Contract.

VI. Taxes and Other Charges.

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee or charge of any nature whatsoever imposed by any governmental authority, domestic or foreign, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefor unless otherwise agreed upon in writing.

VII. Limited Warranties.

1. Seller warrants that the Products, including such parts manufactured by others that are integral therewith, shall be free from defects in material and workmanship for a period of 12 months from the date of Delivery. Seller's obligations under the aforesaid warranty shall be repairing or replacing the Products delivered to Buyer or its customer which if properly installed, used and maintained, prove to be defective in material and workmanship. Such repair or replacement shall be Seller's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon Seller's receipt of written notice of any alleged defect within 10 days after its discovery, and at Seller's option return of such defective Products or part thereof freight prepaid to Seller's principal place of business. The aforesaid warranty shall not apply if Buyer fails to provide notice of the alleged defect in material or workmanship within 12 months from the date of Delivery, and the duration of the warranty may not be waived, tolled, or extended without the express written consent of Seller.

2. Seller's obligations under Section 1 of this Article VII shall not apply to any component or part of Products sold hereunder, which

(a) is consumed by normal wear and tear;

(b) has a normal life inherently shorter than the herein stated warranty period; or (c) has been damaged due to negligent or faulty use, alteration, maintenance not in accordance with applicable instructions or performed by untrained technicians, storage or handling by Buyer.

3. Any description or representation of the Products whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller. Production figures and specifications by Sellers are estimates only and are not warranties, unless expressly stated otherwise.

4. THE WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. 5. ANY PRODUCTS, WHICH BY AGREEMENT OF THE PARTIES ARE OF LESS THAN SELLER'S STANDARD QUALITY ARE SOLD "AS IS".

VIII. Warranty Claims, Inspection, and Waiver of Defects.

1. Written notice of any alleged defect must be presented to Seller immediately upon Buyer's discovery of the defect, and Seller must be allowed to inspect the Products while they are in the alleged defective condition. Use of the Products must be suspended until written clearance is issued by Seller for continued use, provided that Seller, upon receipt of written

notice of an alleged defect, proceeds without unreasonable delay to remedy any defect covered by the warranty.

2. Buyer shall inspect all Products immediately upon their arrival and shall immediately give written notice to Seller of any claim that the Products do not conform to the terms of the Contract. Seller shall have reasonable access to inspect any allegedly nonconforming Products.

3. Buyer waives any right to assert any claim against Seller arising from any non-conformity of Products sold hereunder which would have been observable on reasonable inspection or testing within 30 days after Delivery.

IX. Limitation of Liability.

1. Except as otherwise agreed in writing, Seller's liability with respect to the Products is limited to the warranty provided in Articles VII and VIII hereof, and in no event shall exceed the Contract price of the Products.

2. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICE RENDERED BY SELLER OR UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.

3. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THE CONTRACT OR WITH THE USE OR LIABILITY TO USE SELLER'S PRODUCTS FURNISHED UNDER THIS CONTRACT.

4. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY IS LIMITED TO EITHER

(a) REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR PRODUCTS, OR

(b) AT SELLER'S OPTION, RETURN OF THE GOODS TO SELLER AND REFUND OF PURCHASE PRICE.

5. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, PENALTIES, SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS, OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF REPAIRS TO PRODUCTS SUBJECT TO SELLER'S WARRANTY PERFORMED BY PERSONS OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWN-TIME OR SLOW-DOWN COSTS OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY OTHER THIRD PARTY FOR ANY SUCH DAMAGES. SELLER DISCLAIMS ANY LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT OR IN TORT, WHICH AROSE MORE THAN 1 YEAR PRIOR TO THE INITIATION OF ARBITRATION OR LITIGATION BY BUYER AGAINST SELLER.

6. Buyer agrees to cause its customers and anybody in the chain of manufacturing supply and distribution including the end customer to be bound by limitations of liability substantially equal to those contained in these T&Cs.

X. Security Interest.

BUYER HEREBY GRANTS TO SELLER A SECURITY INTEREST IN THE PRODUCTS SOLD HEREUNDER TO SECURE PAYMENT OF THE PRICE OF SUCH PRODUCTS AND AGREES, AND APPOINTS SELLER ITS AGENT, TO TAKE ALL SUCH ACTION AND TO EXECUTE ALL SUCH DOCUMENTS AND INSTRUMENTS AS MAY BE NECESSARY OR REASONABLY REQUESTED BY SELLER TO PERFECT AND CONTINUE PERFECTED SELLER'S SECURITY INTEREST HEREUNDER.

XI. Insurance.

1. Seller is entitled to insure the Products sold hereunder against damage or loss if shipping is delayed by reasons beyond the reasonable control of Seller during this delay; at the expense of

Buyer unless parties have agreed otherwise. However, Seller is not obligated to obtain insurance.

2. Until final payment is made by Buyer, Buyer shall insure such Products at its expense for the benefit of Seller against damages and loss, including, but not limited to, fire and flood, and shall give written proof thereof to Seller.

XII. Proprietary Information/Confidentiality.

1. All drawings, diagrams, specifications and other materials furnished by Seller (relating to the production, formulation and use of Products sold hereunder and the information therein) are propriety to Seller. All such information supplied by Seller except for information that

- (a) was generally available to Buyer from public or published sources, provided publication did not take place in violation of this Contract or through fault or omission of Buyer,
- (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either Buyer or Seller, or
- (c) was disclosed to the general public with the written approval of Seller shall be received in confidence, and Buyer shall exercise due diligence and reasonable care to hold such information in confidence.

2. In the event Buyer's personnel visits Seller's research or production facility or otherwise receive any proprietary or confidential information from Seller, said information shall be retained as confidential by Buyer and not disclosed to any third party without written prior consent of Seller. Seller retains all rights in any invention or improvement, discovery or patent it conceives relating to the Products sold under this Contract.

3. This Article shall survive the termination or expiration of these T&Cs.

4. The provisions of this section shall be in addition to, and not in lieu of, any other protections that may apply under state and federal trade secrets statutes.

5. If Buyer becomes legally compelled to disclose any proprietary or confidential information of Seller, Buyer will promptly provide written notice to Seller prior to disclosure and will cooperate with Seller's reasonable efforts to obtain a protective order or other confidential treatment of Seller's proprietary or confidential information. If a protective order or other confidential treatment is not obtained or if Seller waives any portion of this provision, Buyer agrees to furnish only so much of Seller's proprietary or confidential information as is legally required and, where appropriate, to exercise its best effort to obtain written assurances that confidential treatment will be accorded to Seller's proprietary or confidential information.

XIII. Patents, Copyrights and Trademarks.

1. Seller assumes no liability as to any patent or copyright infringement by virtue of the use of Products in combination with other goods and services, or the use of Products manufactured to Buyer's specifications.

2. Buyer shall not use Seller's trademarks without Seller's prior written consent.

XIV. Severability.

If at any time any one or more of the provisions of these T&Cs become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these T&Cs shall not be in any way impaired.

XV. Arbitration.

All disputes arising under this Contract shall be settled by final and binding arbitration in the City of Los Angeles, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but in the event they cannot agree, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator or arbitrators shall be final and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

XVI. Governing Law.

The law governing this Contract and any further contracts between Seller and Buyer shall be the substantive laws of the State of California, without regard to its conflicts of law rules. The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

XVII. Construction.

Each term and provision of these T&Cs shall be construed and interpreted so as to render it enforceable. These T&C's shall be deemed to have been drafted jointly by the parties; accordingly, any rule pertaining to the construction of contracts to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of these T&C's or of any modification of or amendment to these T&Cs.

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