

## STANDARD TERMS AND CONDITIONS

October 2012

### 1. GENERAL

These Standard Terms and Conditions of Sale and those noted on the front of Diamond System's Sales Order Acknowledgment (collectively hereinafter "Terms and Conditions") shall govern all sales by Diamond Systems Corporation (hereinafter "DSC") to Buyer. These Terms and Conditions shall be construed as an offer or counteroffer and shall not be construed as an acceptance of Buyer's Purchase Order. After the last Sales Order Acknowledgment is submitted by DSC to Buyer, no modification or addition thereto shall be binding on either party unless it is in writing and signed by both parties. Products ("Products") shall mean any of the Product Types listed in Section 7(c) below.

### 2. TERMS OF PAYMENT

All Products sold to Buyer will be invoiced upon shipment by DSC. Payments shall be in U.S. funds only. Terms of payment shall be net thirty (30) days from date of invoice, subject to the approval of the DSC Credit Department. DSC reserves the right to require payment in advance, C.O.D. or to otherwise modify credit terms. DSC reserves the right to charge interest from the date payment is due, at the maximum legal rate on all delinquent accounts.

### 3. TAXES

Buyer shall provide to DSC any applicable correctly completed tax exemption certificate(s). Otherwise, Buyer shall pay to DSC, in addition to the prices provided for herein, any foreign or domestic duty, sales or use tax, transfer tax, excise tax or similar charge (exclusive of taxes based on net income or net worth) which DSC may be required to pay with respect to the production, manufacture, sale, transportation, storage, delivery or use of Products sold hereunder.

### 4. SHIPMENT AND DELIVERY

4.1 Unless otherwise specified, delivery will be made F.O.B. Diamond Systems Corporation, 555 Ellis Street, Mountain View, CA 94043, U.S.A. All goods sold hereunder will be delivered to a carrier who shall be selected by DSC unless Buyer requests in writing use of another carrier. All risks of loss will pass to Buyer upon delivery by DSC to the carrier. DSC shall exert good faith efforts to make all shipments in accordance with delivery dates noted in Buyer's copy of DSC's Sales Order Acknowledgment.

4.2 Each shipment made hereunder shall be considered a separate transaction. In the event of default by Buyer, DSC may decline to make further shipments. If DSC elects to continue to make shipment, such action shall not constitute a waiver of any default by Buyer or any provision of these Terms and Conditions.

4.3 Buyer shall indemnify and defend DSC against any and all claims or losses to DSC resulting from the negligent or other unlawful acts of a carrier selected by Buyer.

### 5. SECURITY INTEREST

DSC hereby reserves a purchase money security interest in the goods sold hereunder and all the proceeds thereof, including, but not limited to, insurance proceeds to secure performance of all Buyer's payment obligations under this Agreement. Buyer's failure to pay any amount when due shall give DSC the right to repossess and remove the goods, provided that such repossession and removal shall not be made from any customer of Buyer's except upon ten (10) days prior notice to Buyer. Such repossession and removal shall be without prejudice to any of DSC's other remedies at law or in equity. Buyer agrees, without further consideration, at any time to do or cause to be done, executed and delivered all such further acts and instruments as DSC may reasonably request in order to perfect DSC's security interest in the goods, including

without limitation, a financing statement appropriate for filing. If Buyer, for whatever reason, fails to sign a financing statement after DSC has reasonably requested that Buyer sign such a financing statement, Buyer agrees that DSC shall have the authority as Buyer's attorney-in-fact to sign the financing statement as Buyer's agent.

### 6. INSPECTION AND ACCEPTANCE

6.1 The performance of the Product shall be in accordance with DSC's published specifications. Buyer will inspect the Product(s) immediately following delivery of such Product(s) by carrier, and will notify DSC in writing within thirty (30) days thereafter of any nonconformity or defect in or damage to the Products ("Defect Notice"). Failure to provide a written Defect Notice within such time will constitute acceptance by Buyer in full of the Product(s) and an admission by Buyer that such Product(s) fully comply with all terms, conditions, and specifications of Buyer's order.

DSC has the right to examine at Buyer's premises any products the Buyer claims are nonconforming. DSC has the right to impose a reasonable restocking charge if shipments returned to DSC are found to be within the Acknowledgment Quality level. Repairs that are DSC's responsibility may be made, at DSC's election, at Buyer's premises or another location authorized by DSC.

6.2 In the event of (a) a large quantity order, or (b) an order for semi-custom or custom products, or (c) an order including scheduled deliveries, DSC may request that the Buyer sign a Statement of Acceptance regarding Product prior to shipment. This Statement of Acceptance will constitute an agreement by Buyer regarding suitability of the Product for the Buyer's intended application and shall supersede the foregoing terms of acceptance.

### 7. SOFTWARE LICENSE, USE, CONFIDENTIALITY, AND OWNERSHIP

Any Software furnished by DSC to Customer is furnished under a nonexclusive license for use only on Products sold or furnished by DSC or its authorized agent(s). Such Software may not be used on or with any other products or for activities outside the scope of these Terms and Conditions without the prior written permission of DSC. Customer acknowledges that the Software constitutes valuable proprietary, confidential and trade secret information of DSC, or of third party suppliers of Software, as the case may be. Such Software may not be copied in whole or in part, or sublicensed, provided, transferred or otherwise disclosed or made available to third parties without the express prior written permission of DSC or such third party Software supplier, as the case may be. Customer will institute reasonable procedures to preserve the confidentiality of the Software. Customer will notify DSC promptly of any unauthorized use, possession, knowledge, disclosure or copying of any Software. Title to and ownership of the Software will at all times remain with DSC or such third party Software supplier, as the case may be. If requested by DSC, Customer will execute and deliver a standard form of license agreement issued by DSC's supplier with respect to any Software provided hereunder that is owned and licensed by such supplier.

## **8. LIMITED WARRANTY**

8.1 Hardware: Unless otherwise agreed to in writing, Diamond Systems Corporation (DSC) warrants to the original purchaser that its products will be free from defects in material and workmanship for a period of two years from the date of shipment. This warranty will not apply to products that have been misused, damaged in use, or altered. DSC's obligation under this warranty is limited to replacement or repair, at its option. Any such product within the warranty period must be returned to DSC in DSC-approved packaging with a DSC-assigned Returned Material Authorization (RMA) number referenced on the shipping document. Purchaser shall prepay transportation to DSC's designated site. If returned products are repaired or replaced under the terms of this warranty, DSC shall pay return transportation charges.

8.2 Software and Firmware: DSC warrants for the period set forth in subsection (8.3) that Software and Firmware supplied hereunder shall be free of material defects and conform to DSC's published specifications. DSC's sole obligation and Buyer's sole remedy shall be for DSC to exert its best efforts to correct such defects and to supply Buyer with a corrected version within a reasonable time after Buyer notifies DSC in writing of any defect. This warranty does not cover any modifications to the Software and Firmware made by any person other than DSC, or defects caused by, or otherwise related to, such modification.

8.3 The effective period of warranty for board level products and development kits is 2 years from the date of shipment. The effective period of warranty for software and firmware is 90 days from the date of shipment, unless otherwise stated.

Any replacement of Products or components thereof under this warranty shall not extend the period of the warranty which was applicable at the initial sale of the Product. DSC shall not be liable under this warranty (a) where the Products which Buyer alleges are defective have been repaired or altered by anyone other than DSC's designated personnel or authorized representative unless such repair or alteration was effected pursuant to the prior written approval of DSC or (b) where testing and examination by DSC reveals the alleged defect to have been caused by Buyer's misuse, neglect, improper installation or any other cause beyond the range of intended use of the Products or by accident, fire or other hazard.

8.4 Buyer or Buyer's customer retains sole responsibility for all Software, Information or Memory Data stored on or integrated with any of the Products returned under this warranty. In some cases, products sold pursuant to this Sales Order Acknowledgment may have been used and refurbished by DSC's before sale hereunder. DSC warrants all such refurbished products perform identically to all new products sold by DSC.

## **9. LIMITS OF LIABILITY AND INDEMNIFICATION**

9.1 THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. DSC SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER OBLIGATION ON THE PART OF DSC.

9.2 DSC IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, DOWNTIME, GOODWILL, DAMAGE TO OR REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING, REPROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA STORED IN OR USED WITH DSC PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. DSC SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO REPAIR ANY PRODUCT UNDER THIS WARRANTY OR MAKE A PRODUCT EXCHANGE WITHOUT RISK TO OR LOSS OF PROGRAMS OR DATA STORED ON SUCH PRODUCT.

## **10. PATENT INFRINGEMENT INDEMNIFICATION**

10.1 DSC agrees, at its own expense, to defend Buyer and any customer thereof ("indemnitee") from and against any claim, suit or proceeding, and to pay all judgements and costs finally awarded against Buyer or said customer by reason of claim, suit or proceeding insofar as it is based upon an allegation that the Products or any part thereof furnished by DSC infringe any letter patent, if DSC is notified properly of such claim in writing and is given authority and full and proper information and assistance (at DSC's expense) for defense of the same. In case such Products, or any part thereof, are held in such suit to constitute infringement and the use of Products or any part is enjoined, DSC shall at its sole discretion and at its own expense: (1) procure for the indemnitee the right to continue using the Products or part; (2) replace or modify the same so that it becomes noninfringing; or (3) remove such Products or part thereof and grant indemnitee a credit for the depreciated value of the same.

10.2 The indemnitee shall have the right to employ separate counsel in any claim, suit or proceeding set forth in paragraph (10.1) and to participate in the defense thereof, but the fees and expenses of the indemnitee's counsel shall not be borne by DSC unless: (1) DSC specifically so agrees; or (2) DSC, after notice and without cause does not assume such defense. DSC shall not be liable to indemnify indemnitee for any settlement-effected without DSC's consent, unless DSC failed after notice and without cause to defend such claim, suit or proceeding.

10.3 The indemnification set forth in subsection (10.1) shall not apply and Buyer shall indemnify DSC and hold it harmless from all liability or expense (including costs of suit and attorney's fees) if the infringement arises from, or is based upon DSC's compliance with particular requirements of Buyer or Buyer's customer that differ from DSC's standard specifications for the Products, or modifications or alterations of the Products, or a combination of the Products with other items not furnished or manufactured by DSC.

10.4 Buyer agrees that DSC shall not be liable for any collateral, incidental or consequential damages arising out of patent infringement.

10.5 The foregoing states the entire liability of DSC for patent infringement.

## **11. FORCE MAJEURE**

Neither party to this contract shall be responsible or liable to the other party, to any third party for any damages including, without limitation, incidental and consequential damages, arising out of, nonperformance or delay in performance of the terms and conditions herein due to acts of God, wars, riots, strikes, unavailability of suitable and sufficient labor, materials, capacity or technical or yield failures and except as provided in section (4.3) above, any unforeseen event-beyond its control.

If any contingencies occur DSC may allocate production and deliveries among any and all of its customers and for its own requirements for further manufacture and other use.

**12. PROPRIETARY RIGHTS**

Buyer agrees that DSC retains proprietary rights in and to all Product specifications, designs and engineering details for Products, to all DSC designed Software and Firmware, to all manuals marked as proprietary, to all discoveries, inventions, patent and other proprietary rights arising out of work done in connection with any contract between Buyer and DSC, and to all other information or assistance of a technical nature provided to Buyer by DSC that is not so provided for reproduction or delivery to Buyer's customers. Buyer warrants that it will not disclose in any manner to any third person information to which DSC retains proprietary rights therein.

**13. CANCELLATION, RESCHEDULE AND FAILURE TO RELEASE**

13.1 If Buyer cancels shipment of any purchase order, or a portion of any purchase order, or reschedules without prior agreement by DSC any purchase order, or a portion of any purchase order, the following charges may, at DSC's option, be assessed and invoiced by DSC.

Product Type	Notice Received Prior To Schedule Changes	Cancellation/Reschedule Charges
Standard	0 - 30 days	No Cancellations Allowed 15% restocking charge applies
Standard Product Variants & Custom Products	0 - 30 days	No cancellations allowed 100% invoice charges apply .
	31 - 60 days	Up to 50% of product scheduled to ship in this time period. All rescheduled products must ship within 60 days of their original scheduled ship date.
	61 - 90 days	100% invoice charges apply Up to 75% of product scheduled to ship in this time period. All rescheduled products must ship within 90 days of their original scheduled ship date.
	91 days and up	No restrictions

Notice shall be calculated from the Customer Request Date confirmed in the most recent Sales Order Acknowledgment.

13.2 DSC price quotations and acknowledgments are dependent upon quantity and schedule. If the Buyer does not release the full quantity quoted and acknowledged within the time frame stated on the quotation, DSC reserves the right, at DSC's sole discretion, to either invoice the full quantity quoted and acknowledged within the time frame stated on the quotation or to invoice for a higher price in accord with DSC's price schedule for the lower quantity actually released by Buyer.

**14. REMEDIES AND DAMAGES**

14.1 Where Buyer rightfully and timely rejects or justifiably revokes acceptance of items or where Buyer has accepted nonconforming items and has timely notified DSC of a breach of warranty, Buyer's sole and exclusive remedy will be for DSC (at DSC's option) to repair, replace or credit Buyer/Buyer's-account with respect to any nonconforming goods returned to DSC during the applicable warranty or inspection period set forth above and with respect to any nonconforming services on condition that (A)

DSC is promptly, upon Buyer's discovery of the nonconformity, notified in writing with a detailed explanation, (B) DSC issues a Return Material Authorization (RMA) number for return of goods F.O.B. DSC Mountain View, CA. Such RMA shall be effective for forty-five (45) days from issuance date, and (C) DSC's examination discloses that such items are nonconforming.

14.2 DSC has the right to terminate this contract if in DSC's sole judgment Buyer's financial condition does not justify the terms of payment applicable from time to time and upon demand, Buyer does not immediately comply with any modification of payment terms required by DSC in accordance with paragraph 2.

**15. EXPORT OR REEXPORT REQUIREMENTS**

Buyer and DSC shall comply with all export laws of the United States. Export directly or indirectly of these Products, or goods containing these Products to any other country may be prohibited unless Buyer obtains prior export or re-export authorization from the United States Government. Buyer shall hold DSC harmless and indemnify it for any fines, penalties or other liability, (including attorney's fees) that result from Buyer's failure to meet these obligations.

**16. ENTIRE AGREEMENT**

16.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between them relating to the subject matter hereunder and no modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties.

16.2 Buyer and DSC agree that this Agreement is made and entered into in the State of California. Buyer and DSC consent to jurisdiction of any state or federal court in California to resolve any claim or controversy arising from or in any manner related to the transaction documented in this Agreement.

16.3 The plural shall include the singular, and the singular shall include the plural whenever used.

16.4 The provisions of this Agreement are severable and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding on and be enforceable by and between the parties.

16.5 The prevailing party in any legal action brought by one party against the other shall be entitled, in addition to any other rights and remedies it may have to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees.

16.6 All notices required or permitted hereunder shall be in writing and shall be personally delivered or dispatched by, prepaid first-class airmail or by fax and sent to the address indicated.

16.7 This contract may not be terminated by Buyer without DSC's prior written consent. If DSC so consents to such termination, Buyer shall be liable for termination charges, including without limitation, a price adjustment based on the quality of products actually delivered and all costs direct and indirect, incurred and committed for this contract together with reasonable allowance for prorated expenses and anticipated profits.

16.8 An action for breach of contract for sale or any other legal or equitable cause of action arising from or in any manner related to the order specified in the Quotation or Sales Order Acknowledgment must be commenced within one (1) year after the cause of action has accrued.