

## SALES TERMS AND CONDITIONS

All sales made by Ingram Micro Inc. ("Ingram Micro") to its customers with Ingram Micro U.S. resale accounts ("Purchaser") are subject to these terms and conditions. Purchaser's acceptance of these terms and conditions shall be made by either (i) Purchaser providing a purchase order number to Ingram Micro or (ii) Purchaser's acceptance of any Product from Ingram Micro, whichever occurs first. These terms and conditions shall apply to sales of all products described in Ingram Micro's current comprehensive product listing including special order product except as otherwise noted below ("Product"). The term "Special Order Product" as used herein shall mean products that are not listed in Ingram Micro's current comprehensive product listing or have been configured to Purchaser's specifications. Electronic Software Distribution (ESD) product sales are subject to additional terms.

### 1. ORDERING

Prior to placing an order, Purchaser must have an active Ingram Micro sales account number and Purchaser's account must be current and in good standing. Purchaser must provide Ingram Micro with complete Product order information as required by Ingram Micro. The Product order information will include without limitation the (i) Product description, (ii) unit quantity, (iii) Ingram Micro SKU number and/or vendor part number, (iv) current unit price as provided by Ingram Micro, and (v) correct shipping address. For government or educational orders, Purchaser will provide the above Product order information as well as (i) end user name and zip code and (ii) government or educational contract number. Purchaser personnel will identify, for each Product order, the ship-to destination as either Purchaser, Purchaser's customer, or to some other specified third party. Ingram Micro reserves the right to require additional information based on the requirements of the manufacturer or publisher of the Product. Purchaser shall not disclose any confidential information when ordering from Ingram Micro. Purchaser may place orders over telephone, via facsimile, and via Ingram Micro-approved electronic ordering methods only through persons who identify themselves as Purchaser personnel and provide their Ingram Micro customer number prior to placing the order. Ingram Micro will have no obligation to confirm the validity of any order placed or the authority of the person placing an order in this manner. Purchaser will disclose its Ingram Micro customer number only to its personnel with a need to know. Ingram Micro's acceptance of any order from Purchaser is limited to these terms and conditions in their entirety without addition, modification, or exception. Any additional or different terms in Purchaser's purchase order or submitted by Purchaser in any form are hereby deemed to be material alterations hereto and notice of objection to them is hereby given. All orders under \$500 will be assessed a \$5 minimum order fee. Orders for direct shipment to Purchaser's customers or Special Order Products may require prepayment and may be subject to additional fees. Ingram Micro will have no obligation to hold Product for future sale to Purchaser if Purchaser's order is incomplete, on hold, or if Purchaser does not confirm it within 48 hours of notification from Ingram Micro that backordered Product is available for shipment. All Products sold to Purchaser hereunder are for resale only.

All Product pricing, description and availability information ("Information") provided by Ingram Micro, in any form, is the property of Ingram Micro. Ingram Micro hereby grants Purchaser a limited, non-exclusive, non-transferable license to use the Information for Purchaser's internal use only for purposes of Purchaser's sales and purchases of Products sold by Ingram Micro. If Ingram Micro provides Information to Purchaser electronically, Purchaser agrees to update such Information regularly to ensure its accuracy. Purchaser agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilize the Information for any purpose except as permitted herein. INGRAM MICRO MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED ON THE INFORMATION. ALL INFORMATION IS PROVIDED TO PURCHASER "AS IS." INGRAM MICRO HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO INFORMATION INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

### 2. PRICE

All prices are subject to change without notice and will be established at time of order acceptance by Ingram Micro. Order acceptance and sale by Ingram Micro occurs at time of shipment. Prices for backordered Products are not guaranteed.

### 3. SHIPMENT AND DELIVERY

**A. U.S. Shipments** - All Product shipments will be made FOB origin. For Products owned by Ingram Micro, title and risk of loss will transfer to Purchaser upon Ingram Micro tendering the Product for delivery to the carrier. For U.S. shipments totaling \$1,900 or more, excluding shipments to Alaska, Hawaii and U.S. Territories, Ingram Micro will ship Products using Ingram Micro's carrier of choice via standard ground freight service at no charge. If Purchaser requests Ingram Micro prepay and bill Purchaser for freight charges, Purchaser agrees that Ingram Micro retains the right to choose the carrier. Notwithstanding anything to the contrary herein, additional charges may apply for unusually heavy or large items or for shipment of materials designated as hazardous in accordance with Federal and/or International Air Transportation regulations. COD and additional fees may also apply. Purchaser shall examine all Products upon

receipt and shall notify Ingram Micro, as specified herein, of all discrepancies and refusal to accept delivery of purchased Product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Purchaser does not give Ingram Micro such notice as stated herein, Purchaser agrees that such Products have been accepted by Purchaser as of the date of shipment.

**B. International Shipments** - All shipments by Ingram Micro to Purchaser or Purchaser's customers at an address outside of the United States or the District of Columbia are subject to additional terms and will not be made unless Purchaser and Ingram Micro have entered into Ingram Micro's International Fulfillment Agreement (IFA). Under certain circumstances, Ingram Micro may choose to ship Product to Purchasers located at an address outside of the United States or the District of Columbia. These shipments will be made FCA, Ingram Micro's warehouse via Ingram Micro's carrier of choice. Title and risk of loss will transfer to Purchaser upon Ingram Micro tendering the Product for delivery to the carrier. Purchaser will bear all the costs related to shipment and delivery. Purchaser shall examine all Products promptly upon receipt and shall notify Ingram Micro of all discrepancies or if rejection is intended within five (5) calendar days after receipt. Such notice shall be reasonably detailed and shall specify the discrepancy or reason for rejection. Failure to give such notice within such time shall be deemed an acceptance of the Products as of the date of shipment. If the approval of any government or governing organization is required with respect to these terms and conditions or the distribution of the Products including without limitation, giving legal effect to these terms and conditions, protecting intellectual property and other rights in the Products or compliance with exchange regulations, Purchaser will, at its expense, immediately take whatever steps may be necessary to secure such approvals. If any such approval requires or results in the deletion or amendment of any provision of these terms and conditions, then Ingram Micro will have the right to immediately terminate these terms and conditions.

#### **4. CREDIT AND PAYMENT TERMS**

Purchaser shall furnish to Ingram Micro all financial information reasonably requested by Ingram Micro from time to time for the purpose of establishing or continuing Purchaser's credit limit. Purchaser agrees that Ingram Micro shall have the right to decline to extend credit to Purchaser and to require that the applicable purchase price be paid prior to shipment. Purchaser shall promptly notify Ingram Micro of all changes to Purchaser's name, address, or of the sale of substantially all of its assets. Ingram Micro shall have the right from time to time, without notice, to change or revoke Purchaser's credit limit on the basis of changes in Ingram Micro's credit policies or Purchaser's financial condition and/or payment record. Purchaser shall not deduct any amounts owing from any Ingram Micro invoice without Ingram Micro's express written approval, which approval shall be contingent upon Purchaser providing all supporting documentation for such deduction as required by Ingram Micro. A service charge of the lesser of one and one-half percent (1 ½%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due. Credit cards (MasterCard, VISA and Discover Card) will only be accepted at the time of order. No cash payments will be accepted. Payment by money orders or travelers check will be allowed only if the money order or travelers check is made out in the exact amount of the invoice; payment of one invoice through multiple money orders or travelers checks will not be permitted. Additional restrictions regarding third-party payments apply to Purchasers located in Colombia, Panama, or Venezuela. Ingram Micro retains (and Purchaser grants to Ingram Micro by submitting a purchase order) a security interest in the Products to secure payment in full, and Purchaser agrees to execute any additional documents necessary to perfect such security interest. If Purchaser fails to make timely payment of any amount invoiced hereunder, Ingram Micro shall have the right, in addition to any and all other rights and remedies available to Ingram Micro at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Purchaser. Purchaser shall pay all costs of collection including reasonable attorneys' fees. Any obligation of Ingram Micro under these terms and conditions to deliver Products on credit terms shall terminate without notice if Purchaser files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Purchaser, or if a receiver or trustee is appointed to take possession of the assets of Purchaser.

#### **5. TAXES**

Purchaser shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes. Exemption certificates, valid in the place of delivery, must be presented to Ingram Micro prior to shipment if they are to be honored.

#### **6. WARRANTY**

Product warranties, if any, are provided by the manufacturer or publisher of the Products. Ingram Micro makes no warranties whatsoever. Ingram Micro's sole obligation (and Purchaser's sole remedy) in the event of breach of any warranty shall be the repair or replacement of defective Products. IN NO EVENT SHALL INGRAM MICRO BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. INGRAM MICRO DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. INGRAM MICRO MAKES NO WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN.

## 7. PRODUCT RETURNS

**A. Requirements** - Purchaser must obtain a valid Return Material Authorization ("RMA") number from Ingram Micro for all returns. RMAs will be issued, at Ingram Micro's sole discretion, in accordance with these terms and conditions. Purchaser must provide its account number and all other information as required by Ingram Micro for all returns. RMAs are valid for twenty (20) calendar days from the date of issuance. Purchaser must allow for in-transit time for Products to be returned to Ingram Micro, as Ingram Micro must physically receive Products within the twenty (20) calendar days. RMAs will be issued for authorized returns under one of the following categories: (i) defective Products, (ii) stock balancing, (iii) billing or shipping discrepancies, or (iv) damaged Product. Purchaser is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to Ingram Micro. Ingram Micro will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Overgoods are unauthorized returns. Any Products received by Ingram Micro (i) without a valid RMA number, including Product shipments refused by Purchaser or Purchaser's customer except those damaged in transit from Ingram Micro to Purchaser or from Ingram Micro to Purchaser's customer, (ii) later than twenty calendar (20) days from the RMA date, or (iii) in a condition unsuitable for resale (excluding defective Products), will be considered Overgoods. Ingram Micro will return Overgoods to Purchaser or Purchaser's customer, and will charge Purchaser a \$50 processing fee per shipment plus related freight charges. If Purchaser refuses the shipment of Overgoods from Ingram Micro or returns the Overgoods to Ingram Micro a second time without Ingram Micro's prior authorization, Purchaser agrees to relinquish all right and title to and waives all claims against Ingram Micro for credit related to such Products. Notwithstanding anything to the contrary, Ingram Micro reserves the right not to authorize the return of Products that are no longer in production or are being produced or published by a manufacturer or publisher that (i) is insolvent, (ii) has declared bankruptcy, or (iii) will not accept returns from Ingram Micro.

**B. Defective Product Returns** - Defective returns are only for Products purchased from Ingram Micro that are inoperable or do not function in accordance with the specifications published by the manufacturer or publisher and are covered under the manufacturer's or publisher's warranty. All defective returns are subject to more restrictive manufacturer or publisher policies. Purchaser may request an RMA for the return of defective Products, excluding Special Order Products, within forty-five (45) calendar days of invoice date. Purchaser's defective returns will be limited to a maximum of 15% of the value of Purchaser's Product purchases within the same vendor code as the defective Product during the forty-five (45) calendar days prior to the RMA date, less any prior defective returns during that period. Upon receipt of the defective Product for which the RMA was issued, Ingram Micro may test the Products and may return to Purchaser, at Purchaser's expense, any Products found not to be defective. Upon verification that the returned Product is defective, Ingram Micro may, at Ingram Micro's sole discretion, either (i) repair the defective Product, (ii) ship Purchaser a replacement Product, or (iii) provide Purchaser a credit equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. Ingram Micro reserves the right to require Purchaser to return defective Products directly to the manufacturer or publisher for replacement according to its defective Products return policy. Ingram Micro shall not be obligated to repair, replace, or issue credit to Purchaser for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance or application of the Products or use of unauthorized parts. Purchaser shall bear all risks of loss when returning defective Products.

**C. Stock Balance Returns** - Stock balance returns are only for Products purchased from Ingram Micro that are unopened and unused and can be re-sold as new. All stock balance Products returned must be in the manufacturer's original packaging and in condition suitable for resale including, but not limited to, without price tags or stickers or additional shrink wrapping, clean, undamaged and complete ("Stock Balance Condition"). All stock balance returns are subject to more restrictive manufacturer or publisher policies. Purchaser may request an RMA for the return of Products in Stock Balance Condition, except for Special Order Products, within ninety (90) calendar days of invoice date. Purchaser's stock balance returns will be limited to a maximum of 15% of the value of Purchaser's Product purchases within the same vendor code as the Product to be returned during the ninety (90) calendar days prior to the RMA date, less any prior stock balance returns during that period. Upon receipt of the Product for which the RMA was issued, Ingram Micro will verify the condition of the Product. Any Products that are not in Stock Balance Condition will be considered Overgoods. Ingram Micro will return Overgoods to Purchaser and will charge Purchaser a \$50 processing fee per shipment returned to Purchaser plus related freight charges. Additional fees may apply to returned Products; e.g., re-box, label removal, re-shrink, etc., that are not in Stock Balance Condition. Upon verification that the returned Product is in Stock Balance Condition, Ingram Micro will issue a credit to Purchaser equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. If Ingram Micro elects to restore returned Product to Stock Balance Condition instead of returning it to Purchaser, the credit to Purchaser will be net of Ingram Micro's costs to return the Product to Stock Balance Condition. Purchaser shall pay all costs and bear all risks of loss when returning Products to Ingram Micro.

**D. Damaged Product Returns** - Damaged Product returns are only for Products purchased from Ingram Micro and shipped via Ingram Micro's carrier of choice that are damaged in transit from Ingram Micro to the Purchaser or from Ingram Micro to the Purchaser's customer. Purchaser or Purchaser's customer shall refuse any Product delivered in damaged condition. If the Product is received in damaged condition, Purchaser shall notify Ingram Micro and request an

RMA within three (3) business days of receipt of such Product. Failure to notify Ingram Micro and request an RMA within such time shall be deemed an acceptance of the Product as of the date of shipment.

## **8. BILLING AND SHIPPING DISCREPANCIES**

Billing and shipping discrepancies are for Products purchased from Ingram Micro that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/invoice errors. Purchaser may request an RMA for verified billing and shipping discrepancies within thirty (30) calendar days of invoice date. In addition, Purchaser must notify Ingram Micro of any billing discrepancies related to Purchaser's authorized returns within ninety (90) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Purchaser's rights to claim such discrepancy.

## **9. PATENT AND TRADEMARK INDEMNITY**

INGRAM MICRO SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS.

## **10. LIMITATION OF LIABILITY**

INGRAM MICRO SHALL NOT BE LIABLE TO PURCHASER, PURCHASER'S CUSTOMERS, OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY PURCHASER, PURCHASER'S CUSTOMER, OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO PURCHASER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTS OR OMISSIONS OF INGRAM MICRO. IN NO EVENT SHALL INGRAM MICRO BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY INGRAM MICRO, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY PURCHASER HEREUNDER. IN NO EVENT SHALL INGRAM MICRO BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH INGRAM MICRO'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION INGRAM MICRO SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. PURCHASER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. IN NO EVENT SHALL INGRAM MICRO HAVE ANY LIABILITY FOR ANY PRODUCTS USED FOR AVIATION, MEDICAL, LIFESAVING, LIFE-SUSTAINING OR NUCLEAR APPLICATIONS.

## **11. COMPLIANCE WITH U.S. EXPORT LAWS**

If Purchaser delivers the Products to its customer who may use the Products outside the United States, Purchaser acknowledges and shall advise its customer that the Products are controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States or re-export. Purchaser agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States. Purchaser warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Purchaser has obtained prior approval from the Department of Commerce. Purchaser further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce.

## **12. RELATIONSHIP OF THE PARTIES**

Purchaser's relationship with Ingram Micro will be that of an independent contractor. Purchaser will not have, and will not represent that it has, any power, right or authority to bind Ingram Micro, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Ingram Micro or in Ingram Micro's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Purchaser and Ingram Micro as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on Ingram Micro's behalf.

### **13. MANUFACTURER, PUBLISHER, AND SUPPLIER RESTRICTIONS**

If authorization for resale is required by the manufacturer or publisher of any Product, then Ingram Micro will not be obligated to sell such Product to Purchaser unless Ingram Micro has received notification of such authorization from the manufacturer or publisher. All Products delivered to Purchaser hereunder may have additional restrictions on their use required by the manufacturer or publisher. Purchaser is solely responsible for ensuring its adherence to any and all such restrictions and requirements. If any supplier prohibits Ingram Micro from selling specific Products to Purchaser, then Ingram Micro reserves the right not to sell such Products to Purchaser.

### **14. CHOICE OF LAW/CHOICE OF FORUM**

These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the internal laws of the State of California, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. Purchaser agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the State of California, Courts of Orange County, California, or the United States District Court at Santa Ana, California. The state and federal courts situated in Orange County, California will have non-exclusive jurisdiction and venue over any dispute or controversy that arises out of these terms and conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

### **15. NOTICES**

All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to Ingram Micro shall be sent to: Ingram Micro Inc., 1600 E. St. Andrew Place, Santa Ana, CA 92705, Attn: Legal Department.

### **16. BINDING EFFECT/ASSIGNMENT**

These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns. Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment shall be void. Notwithstanding the foregoing, Ingram Micro may assign any purchase order received from Purchaser to a subsidiary or affiliate upon notice to Purchaser.

### **17. PARTIAL INVALIDITY**

If any provision of these terms and conditions shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **18. NO WAIVER**

Failure or delay of Ingram Micro to exercise a right or power under these terms and conditions shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

### **19. CAPTIONS**

The captions used herein are for reference purposes only and shall have no effect upon the construction or interpretation of any provisions herein.

### **20. GENERAL**

These terms and conditions, as published on Ingram Micro's Web site located at [www.ingrammicro.com](http://www.ingrammicro.com) at the time of sale, are the official terms and conditions of sale between Ingram Micro and Purchaser and may be amended from time to time without notice at Ingram Micro's sole discretion.