

**STRATEDGE CORPORATION  
TERMS AND AGREEMENT OF SALE**

StratEdge Corporation and Purchaser hereby agree to the following terms and conditions:

**1) CONTROLLING DOCUMENT**

The acceptance by StratEdge Corporation of any order from Purchaser for the components or services as described on the quote provided to Purchaser (collectively the "Products") is expressly made conditional on the Purchaser's assent to the Terms & Conditions set forth herein, and StratEdge Corporation agrees to furnish the Products only upon these Terms & Conditions. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and cancels and supersedes all prior communications, representations, understandings, agreements and course of dealings. Purchaser's purchase order is solely for the purpose of requesting delivery dates, quantities and shipping destinations. Any provision of Purchaser's purchase order (or other documents and communications) which is in any way inconsistent with or in addition to the Terms and Conditions contained herein shall not become part of this contract or otherwise be binding on StratEdge Corporation unless expressly agreed to in writing by StratEdge Corporation. If Purchaser does not agree to the Terms & Conditions contained herein, Purchaser shall promptly return the Products to the location where Purchaser obtained them for a full refund. The Terms & Conditions hereof shall be applicable whether or not they are attached to or enclosed with the Products and whether or not this Agreement form is executed for every particular Product on any sale hereafter.

**2) PRICES, PAYMENT TERMS, AND SHIPMENT DATE**

- A) All prices quoted by StratEdge Corporation are FOB StratEdge Corporation's plant in San Diego, California or Taunton, Massachusetts, as applicable. In all cases title, risk of loss and all responsibility for transportation, insurance and storage shall pass from StratEdge Corporation to Purchaser upon StratEdge Corporation making the Products available to Purchaser at StratEdge Corporation's plant or other designated location prior to loading by commercial carrier for shipment to the Purchaser's designated location. The Products will be deemed accepted by Purchaser on receipt.
- B) For purposes of this Agreement, "Shipment Date" shall mean, in regard to any Product, when the Product is first made available FOB StratEdge Corporation plant or other designated location prior to loading by a commercial carrier for shipment to the Purchaser's designated location.
- C) For component parts and services Purchaser shall pay 100% net 30 days after the Shipment Date. If payment is not received within 30 days after the Shipment Date, Purchaser shall pay late charges on such past due amounts at the rate of 1.5% per month or the maximum rate allowed by law, whichever is lower, accruing as of the Shipment Date.
- D) Notwithstanding the payment provision described above in this paragraph 2, StratEdge Corporation may at its sole discretion require payment by letter of credit, which letter of credit must be irrevocable at site opened not less than 90 days prior to scheduled shipment date or immediately upon confirmation of order, whichever occurs later, for the benefit of StratEdge Corporation confirmed by, and payable in full, against a Bill of Lading evidencing delivery to carrier FOB StratEdge Corporation's plant.
- E) The Products covered by this Agreement are of special manufacture nature such that scheduled shipping date is only an approximate shipping date. The Shipment Date may be different than the scheduled shipping date and StratEdge Corporation shall not be liable for any liability or injury to the Purchaser arriving from such difference.
- F) Without liability to any person and without prejudice to any other remedy, StratEdge Corporation may withhold or delay shipment of any order in accordance with these Terms & Conditions or if Purchaser is late in payment or is otherwise in default under this Agreement.
- G) StratEdge Corporation will determine the method of transportation or carrier, unless Purchaser specifies a method of transportation and carrier in writing within 30 days prior to the scheduled shipping date or prior to shipment. In each case claims for damages must be filed with the applicable carrier. Purchaser is responsible for all export and import authorizations.

**3) ADEQUATE ASSURANCE**

If after accepting an order, StratEdge Corporation determines that Purchaser no longer represents a satisfactory credit risk, StratEdge Corporation may seek Purchaser's assurance of ability to perform under this Agreement, including payment of the price whether cash or letter of credit, before StratEdge Corporation must provide any Product. If StratEdge Corporation does not receive adequate assurance of Purchaser's ability to perform under this Agreement, StratEdge Corporation may decline to provide the Products until adequate assurance is provided. If Purchaser is unable to provide adequate assurance within 90 days of being so requested by StratEdge Corporation, StratEdge Corporation may treat Purchaser's said inability as a cancellation under Paragraph 7) of this Agreement.

**4) SECURITY INTEREST**

StratEdge Corporation retains, and Purchaser grants, StratEdge Corporation a security interest in the Products sold hereunder and in the proceeds from any sale, exchange, collection or disposition of Purchaser thereof, until Purchaser has made payment in full for such Products and for any other obligations of Purchaser under this Agreement. Purchaser shall, upon request and without legal demand by StratEdge Corporation (i) provide all information required by StratEdge Corporation to perfect such security interest whether as a personal property or a fixture security interest, and (ii) execute any financing statements, continuation statements, or other documents as StratEdge Corporation requests to protect its security interest.

**5) EXCUSABLE DELAY**

StratEdge Corporation reserves the right to make partial shipments, and unless otherwise specifically agreed, shipments shall be separately invoiced and paid for when due without regard to later shipments. Delay in shipment of any installment shall not relieve Purchaser of its obligations to pay for prior shipments, nor to accept later shipments. StratEdge Corporation shall not be liable for any loss or damage as a result of any failure to perform or any delay in shipment, due to any cause beyond StratEdge Corporation's control, including but not limited to an act of God, an act of Purchaser, fire, theft, flood, war, sabotage, slow-down, strike or other labor difficulty, riot, acts of terrorism, embargo, government act, regulation, rule ordinance or request or inability to obtain necessary labor, materials, manufacturing facilities or transportation. In the event of

any such contingency by which StratEdge Corporation is unable to supply Products specified hereunder, StratEdge Corporation shall have the right to allocate it's available supply among it's customers in the departments and divisions of StratEdge Corporation. In no event shall StratEdge Corporation be obligated to purchase materials not available at any moment in time from others in order to enable it to ship Product to Purchaser hereunder. Should StratEdge Corporation choose not to exercise it's right to allocate, the date of shipment shall be extended by a period equal to the time lost by the delay.

In any event, shipping time shall not be considered absolute and no breach shall be found if the Products are shipped within a reasonable time after the scheduled shipping date.

6) **TAXES AND OTHER CHARGES**

Any sale, use, excise, value-added or custom tax or any inspection or testing fees or any other tax, fee, penalty or charge of any nature whatsoever imposed currently or in the future by any federal, state or other government authority, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption on any Product or upon payment to StratEdge Corporation hereunder shall be paid for by Purchaser in addition to the purchase price. In the event StratEdge Corporation is required to pay any such tax, fee or charge, Purchaser shall reimburse StratEdge Corporation therefor. If Purchaser does not so reimburse StratEdge Corporation within 60 days after shipment, Purchaser shall be liable to StratEdge Corporation for an interest charge of 18% per annum or the maximum rate allowed by law, whichever is lower, and in addition, Purchaser shall pay all costs incurred by StratEdge Corporation in extending credit for the tax, fee, penalty or charge.

7) **CANCELLATION**

Purchaser may cancel StratEdge Corporation's manufacture of the Products upon, and only upon, each and all of the following conditions:

- A) Purchaser must send StratEdge Corporation written notice of cancellation (a "Notice"), which must specify what Products such cancellation affects (the "Canceled Products").
- B) If a Notice is received by StratEdge Corporation less than 90 days prior to the latest confirmed scheduled shipping date by StratEdge Corporation, Purchaser shall pay StratEdge Corporation 100% of the price of the canceled Products as a cancellation fee, plus costs in item C below if applicable.
- C) Upon receipt of notice of cancellation/termination StratEdge Corporation shall immediately discontinue work and comply with the Purchaser's instructions concerning disposition of completed Product, partially completed Product, work in process and material acquisitions pursuant to this order. For all Product not covered by item B above, StratEdge Corporation shall be paid an amount in settlement which shall cover StratEdge Corporation's reasonable costs (including overhead and G&A) of performance incurred prior to termination in connection with the items terminated, plus a reasonable profit based upon such costs. In addition, Purchaser will be obligated to remit payment for the difference in price relative to the actual purchase quantity vs. the contracted purchase quantity.
- D) Purchaser will be obligated to remit payment for the difference in price relative to the actual purchase quantity vs. the contracted purchase quantity.
- E) Purchaser understands and agrees that:
  - 1) The cancellation fees described above in paragraphs 7 (A, B, C and D) heretofore are to be liquidated damages and not penalties.
  - 2) Fixing actual damages in the case of cancellation would be impracticable or extremely difficult, and
  - 3) The cancellation fees described above in paragraph 7 represents a reasonable estimation by the parties of fair compensation for the foreseeable losses and cost that might result from a cancellation.
- F) All payments which Purchaser makes to StratEdge Corporation for any Products shall be applied first to Purchaser's obligations for cancellation fees pursuant to this paragraph 7 (A, B, C and D) heretofore before applying any such payments to Purchaser's obligations to pay the price of the Product.

8) **WARRANTY; DISCLAIMER OF WARRANTY; LIMITATIONS OF REMEDIES**

- A) StratEdge Corporation warrants that at the time of manufacturer's shipment that the Products were free from defects in material and workmanship.
- B) Purchaser agrees to notify StratEdge Corporation in writing within thirty (30) days of Purchaser's discovery of any defective performance, failed performance, or other breach of this agreement by StratEdge Corporation and request a written authorization (a Return Material Authorization) from StratEdge Corporation signed by the Vice President of Marketing, President, General Manager or Controller of StratEdge Corporation. Purchaser must then return Product freight prepaid with the Return Material Authorization. Failure of Purchaser to provide such notice to StratEdge Corporation within this specified period constitutes a waiver of the defective or failed performance or other applicable breach by StratEdge Corporation.
- C) If in it's sole discretion StratEdge Corporation determines that the Product was defective at the Shipment Date, StratEdge Corporation may in it's sole discretion, either repair or replace the Product, but in either case will pay to return the Product to Purchaser. The foregoing shall be Purchaser's sole remedy for defective Products hereunder. If in it's sole discretion StratEdge Corporation determines that the Product was not defective at the Shipment Date, Purchaser must bear all expenses incurred in StratEdge Corporation's inspecting and testing the Product whether or not the Product is accompanied by a Return Material Authorization. Upon notifying the Purchaser that the Product has been inspected and tested and found not to be defective at the Shipment Date, Purchaser shall, in addition to the expenses described in the previous sentence, pay all transportation and insurance expenses and shall bear the risk of all loss and damage during transit.
- D) This warranty applies only to Products that after the Shipment Date, have not been damaged, altered, repaired or treated in any manner whatsoever, whether negligently or not, by other than an authorized representative of StratEdge Corporation

- E) EXCEPT AS EXPRESSLY PROVIDED HEREIN, STRATEDGE CORPORATION HEREBY EXCLUDES ALL WARRANTIES NOT HEREIN STATED, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW, COURSE OF DEALING, TRADE USAGE, REPRESENTATION, STATEMENT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. STRATEDGE CORPORATION ALSO EXCLUDES ALL OTHER OBLIGATIONS AND LIABILITIES IN CONNECTION WITH THE SALE OF THE PRODUCTS.
- F) STRATEDGE CORPORATION SHALL NOT UNDER ANY CIRCUMSTANCE BE LIABLE TO ANYONE FOR INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS AND LOST SAVINGS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT STRATEDGE CORPORATION OR A LICENSOR OF STRATEDGE CORPORATION WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. STRATEDGE CORPORATION'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO REPLACING OR REPAIRING ANY DEFECTIVE PRODUCT ACCORDING TO THE TERMS SET FORTH HERETOFORE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IN NO EVENT WILL STRATEDGE CORPORATION BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. STRATEDGE CORPORATION'S MAXIMUM LIABILITY FOR ANY REASON SHALL NOT EXCEED THE TOTAL PAYMENTS TO STRATEDGE CORPORATION HEREUNDER FOR THE RELEVANT PRODUCTS.
- G) StratEdge Corporation neither assumes nor authorizes any person, firm or entity to assume for it any other additional liability or responsibility in connection with its Products.
- H) Purchaser accepts all Products subject to the terms and conditions herein.

9) **INDEMNIFICATION BY PURCHASER**

Notwithstanding any other provision in this agreement, Purchaser shall defend, indemnify, and hold harmless StratEdge Corporation, its directors, officers, employees and agents from and against any claims, demands, causes of action, liabilities, or expenses (including attorneys' fees and costs) for any personal or bodily injury, illness or death or property damage or any other claims, demands, allegations, damages, costs or liabilities arising out of or resulting in any way from Purchaser's intentional or negligent misuse or mishandling of the Products purchased from StratEdge Corporation.

10) **NO LIFE SUPPORT APPLICATIONS**

The Products are not designed for, and StratEdge Corporation has no desire to enter, the life support market or to supply its Products for use in life support or other critical care applications, or to expose itself to the risk of any loss, expense, cost, liability litigation and/or potential adverse verdict or judgment in relation to any such use of Products. Accordingly, StratEdge Corporation disclaims any and all liability, and Purchaser and customers of Purchaser assume all risks of any such use of the Products and Purchaser agrees to defend and indemnify StratEdge Corporation against any and all claims arising out of any use of the Products sold hereunder in any life support or other critical care application.

11) **ALLOCATION OF RISK**

The sections on limitation of liability, limitation of warranties, and indemnity allocate the risks of this agreement between the parties. This allocation is reflected in the pricing of the Products purchased hereunder and is an essential element of the basis of the bargain between the parties.

12) **DEFAULT**

In the event Purchaser fails to pay any indebtedness due hereunder, breaches any promises herein, or any representation or warranty made by Purchaser herein is found to be untrue or unfulfilled (any such occurrences being an "Event of Default"), StratEdge Corporation shall have the right to require Purchaser, at Purchaser's own risk and expense to return the Products immediately to StratEdge Corporation, or without any other legal process, to enter the premises where the Products are located to take possession of and remove them, and the Purchaser shall take all necessary or appropriate action to assist StratEdge Corporation and to facilitate the Products removal as StratEdge Corporation shall request, whereupon in any such case, all rights of Purchaser to possess the Products shall terminate and StratEdge Corporation may therefore decline further to perform its obligation under this Agreement. StratEdge Corporation may require Purchaser to assemble the Products to make them available at a place designated by StratEdge Corporation and reasonably convenient to both parties. If despite an Event of Default, StratEdge Corporation elects to continue to provide Products to Purchaser, StratEdge Corporation's election shall not constitute a waiver of the Event of Default nor in any way affect StratEdge Corporation's rights and remedies arising as a result of such an Event of Default.

13) **SUBSTITUTES, CHANGES OR IMPROVEMENTS**

Substitutes may be furnished by StratEdge Corporation for materials unobtainable by StratEdge Corporation because of governmental priorities or regulations and for materials unavailable from StratEdge Corporation's customary suppliers. Process, construction and design details are only approximate and subject to revision. StratEdge Corporation shall notify Purchaser of revisions which StratEdge Corporation in its sole discretion has deemed material.

14) **PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES**

Except in the particulars specified by Purchaser and expressly agreed to in writing by StratEdge Corporation, all materials and spare parts shall be produced in accordance with StratEdge Corporation's standard practices. All materials and spare parts including those produced to meet exact specifications, shall be subject to tolerances and variations consistent with usages of the trade and regular mill practices concerning dimension, weight, straightness, section, composition and mechanical properties, normal variations in surface, internal conditions and quality, deviations from tolerances and variations consistent with practical testing and inspection methods and regular mill practices concerning over and under shipments.

15) **PATENT AND TRADEMARK IDENTITY**

- A) Purchaser shall hold StratEdge Corporation harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Purchaser's designs, formulas, processes, specifications, instructions or requirements that the Products be produced to perform a specific process. The Products are offered for sale and are sold by StratEdge Corporation subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright, trademark, mask work or other intellectual property right claim with respect to which StratEdge Corporation can grant licenses covering complete equipment, or any compilation, assembly, combination, method or process in which any such Products are used as components. StratEdge Corporation expressly reserves all its rights under such intellectual property rights claims.
- B) StratEdge Corporation is not aware of any patents, trademarks, copyrights or other proprietary rights of others which cover the Products. StratEdge Corporation accepts no liability for and shall not incur any obligation to defend Purchaser or any other party against charges of infringement or violation of any patent, trademark, copyright, or other proprietary right arising from compliance with Purchaser's designs, formulas, processes, specifications, instructions or requirements that the Products be produced to perform a specific process. StratEdge Corporation shall not indemnify and shall not hold Purchaser or any other party harmless against charges of infringement of the patents, trademarks, copyrights or any other proprietary rights of others or unfair competition arising from compliance by StratEdge Corporation with Purchaser's designs, formulas, processes, specifications, instructions or requirements that the Products be produced to perform a specific process.
- C) In case any Product is held to constitute an infringement of a patent or other intellectual property right and the use of Products is enjoined, StratEdge Corporation shall at its own expense, either procure for the Purchaser the right to continuing to use the Product, replace it with a non-infringement product, modify the Product so it becomes non-infringement, or remove the Product and refund the purchase price to the Purchaser together with transportation costs thereof. In no event shall StratEdge Corporation's total liability to the Purchaser or as a result of the compliance with the provisions of this subparagraph 12(C), exceed the price paid or to be paid by the Purchaser for the allegedly infringing Product. This subparagraph 12(C) states the entire liability of StratEdge Corporation for patent or other intellectual property infringement by the Products.

THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANT AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT OF ANY KIND.

16) **EXPORT CONTROL**

In exercising its rights under this Agreement, Purchaser agrees to comply strictly and fully with all export controls and regulations imposed on the Products by the U.S. and any country or organization or nations within whose jurisdiction Purchaser operates or does business.

17) **GOVERNMENT CONTRACTS**

If any order by Purchaser indicates that the purchase is being made for use under a U.S. government contract or subcontract and a U.S. government contract number appears on Purchaser's order, the applicable U.S. Government Procurement Regulations which (i) are mandatory under federal statute or regulation and (ii) must be included in the U.S. Government subcontracts for commercial products, shall be incorporated herein by reference. Purchaser shall provide StratEdge Corporation upon request with appropriate information relating thereto. No other term or condition of the prime U.S. government contract will be included herein unless set forth in a separate written document signed only by a duly authorize representative of StratEdge Corporation

18) **RETURNS**

Unless specifically noted otherwise in writing the return of any Product constitutes Purchaser's authorization for StratEdge Corporation to repair the Product and to invoice Purchaser for any and all reasonable cost of repair labor, parts and freight on items not covered by terms of warranty described in Paragraph 8) above. Such authorization includes charges for handling of returned items not found defective by StratEdge Corporation at the original shipment date. StratEdge Corporation shall not be obligated to repair or replace any material rendered defective in whole or in part by external causes such as but not limited to catastrophe, power failure or transients, over voltage or interface environment extremes, or improper use, maintenance, shipping, unpacking or applications.

19) **THIRD PARTY PROPRIETARY INFORMATION**

Purchaser shall not supply any data to StratEdge Corporation which is proprietary to Purchaser or to any third party and will indemnify, defend, and hold StratEdge Corporation harmless from any claims of such third party with respect to the data furnished by Purchaser to StratEdge Corporation.

20) **DRAWINGS AND DESIGNS**

Portions of the information supplied to Purchaser are proprietary to StratEdge Corporation. All specifications, drawing, designs, engineering details, information, ideas, methods, patterns, inventions and other data made, conceived, developed or acquired by StratEdge Corporation incident to procuring or carrying out this agreement will invest in and inure to StratEdge Corporation's sole benefit.

Unless otherwise set forth, drawings are not subject to approval. Purchaser agrees not to give, loan, exhibit or sell to any other person or interest outside of its own Company any drawing, photograph or specification furnished by StratEdge Corporation or reproductions thereof.

StratEdge Corporation will furnish only in the opinion of StratEdge Corporation all necessary drawings and instructions for Product applications.

Unless otherwise arranged tracings and reproducible drawings will not be provided by StratEdge Corporation

21) **NO ASSIGNMENTS**

Purchaser may not assign this agreement or any interest or right herein without StratEdge Corporation's prior written consent. Any assignment without such consent shall be null and void at StratEdge Corporation's option.

22) **AMENDMENT**

This agreement may be amended or supplemented only by a writing that refers explicitly to this agreement and that is signed by the authorized representatives of both parties.

23) **CALIFORNIA LAW**

This Agreement shall be governed by and construed in accordance with the law of the state of California without regard to its conflict of law principles.

24) **WAIVER**

No waiver, alteration or modification of any of the provisions hereof shall be binding on StratEdge Corporation unless made in writing and signed by the Vice President of Marketing or President of StratEdge Corporation. A waiver or modification by StratEdge Corporation of any condition or obligation of Purchaser hereunder shall not be construed as a waiver or modification of any other condition or obligation and no waiver or modification by StratEdge Corporation granted on any one occasion shall be construed as applying to any other occasion.

25) **NOTICES**

All notices, reports, requests, approvals and other communications required or permitted hereunder must be in writing. They will be deemed given when (i) delivered personally, (ii) sent by confirmed facsimile, (iii) sent by commercial overnight courier with written verification of receipt, or (iv) sent by registered or certified mail, return receipt requested, postage prepaid. All communications must be sent to the receiving party's address as specified by the receiving party.

26) **EXCLUSION OF LIABILITY OF STRATEDGE CORPORATION'S AGENTS OR EMPLOYEES**

Purchaser agrees that StratEdge Corporation's officers, directors, employees and other agents are not, and shall not be, personally liable under this agreement or upon any claim arising out of the entry into, performance, or non-performance of this agreement, or any part thereof, and Purchaser's sole recourse with respect to any such claim shall be against StratEdge Corporation subject to the other limitations set forth herein.

27) **ARBITRATION**

Any controversy of claim arising out of or relating to this Agreement, or breach hereof, shall be settled by arbitration in the City of San Diego in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered into any court having jurisdiction thereof.