

**FINISAR TERMS AND CONDITIONS
(NETWORK TOOLS/INSTRUMENTS)**

ANY TERMS, CONDITIONS AND/OR PROVISIONS CONTAINED IN BUYER'S PURCHASE ORDER (OR ANY OTHER COMMUNICATION FROM BUYER) WHICH ARE IN ANY WAY INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS (THE "TERMS") HEREIN ARE HEREBY REJECTED BY FINISAR CORPORATION ("SELLER") AND SHALL NOT BE APPLICABLE TO THESE TERMS OR BINDING IN ANY WAY UPON SELLER. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND RECEIVED BY SELLER PRIOR TO COMMENCEMENT OF SHIPMENT BY SELLER OF ANY ITEMS LISTED ON THE DOCUMENT TO WHICH THESE TERMS ARE ATTACHED (THE "GOODS"). RETENTION BY BUYER OF ANY GOODS SHALL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE OF THESE TERMS. SELLER'S FAILURE TO OBJECT TO TERMS CONTAINED IN BUYER'S PURCHASE ORDER (OR ANY OTHER COMMUNICATION FROM BUYER) WILL NOT BE DEEMED A WAIVER OF THESE TERMS OR AN ACCEPTANCE OF THE TERMS CONTAINED IN BUYER'S PURCHASE ORDER.

1. Title and Delivery. All Goods shall be delivered F.O.B. Seller's shipping facility, risk of loss and damage thereto shall pass to Buyer upon Seller's tender of delivery thereof to a carrier at such point, and any loss or damage thereafter shall not relieve Buyer from any payment obligation. Buyer shall be responsible for filing any claims with a carrier. However, notwithstanding passage of title, Seller shall retain a security interest and right of possession in the articles until Buyer has made payment in full. Buyer agrees to cooperate in whatever manner necessary including executing the applicable UCC filing statements, to assist Seller in the perfection of said security interest. Seller shall have the right to deliver the Goods up to fourteen (14) days prior to any agreed upon delivery date. Subject to Seller approval, Buyer may reschedule a shipment of Goods provided that Seller has received written notice from Buyer more than thirty (30) days prior to the originally scheduled shipping date. Buyer also acknowledges that it has no right to modify the shipment date without payment of Seller's then-current fees therefor. Seller reserves the right to make deliveries in installments and the contract shall be severable as to any such installments. Delay in delivery or other default of any installment shall not relieve Buyer of its obligation to accept and pay for remaining deliveries. Buyer shall be responsible for all import duties, taxes, and any other expenses incurred or licenses or clearances required at port of entry and destination, and shall be responsible for the costs, if any, incurred by Seller in relation to expedited or "RUSH" orders. Shipping dates are approximate only, and Seller shall not be liable for any damage, loss or expense incurred by Buyer if Seller fails to meet the specified shipping dates. Unless otherwise specified, Goods shall be shipped in Seller's standard packaging. When special or export packaging is requested or, in the opinion of Seller, required under the circumstances, the cost of shipping, if not set forth on the invoice, will be separately invoiced. Unless specifically agreed in writing all shipments shall be to the same address.

2. License; Title. Seller grants Buyer a nonexclusive, nontransferable license to use the object code version of the software (that is listed and identified as software on the document to which these terms are attached) (the "Software") and the accompanying documentation ("Documentation") for Buyer's internal business purposes solely in conjunction with Buyer's use of the Goods. Buyer agrees that Buyer will not attempt, and if Buyer is a corporation, Buyer will use Buyer's best efforts to prevent Buyer's employees and contractors from attempting, to reverse engineer, decompile, disassemble, modify, translate, create derivative works, rent, lease, loan, distribute or sublicense the Software, in whole or in part. Title to and ownership of the Software and Documentation, and any improved, updated, modified or additional parts thereof, and all copyright, patent, trade secret, trademark and other intellectual property rights embodied in the Goods, shall at all times remain the property of Seller or Seller's licensors.

3. Inspection. Buyer shall inspect and either accept or reject the Goods in each shipment within seven (7) calendar days of receipt by Buyer; entire shipments may not be rejected based on inspection by sampling. Product not rejected within such time period will be deemed accepted by Buyer for all purposes.

4. Prices. The prices listed on the face hereof (the "Prices") apply to the Goods only if they are shipped within three (3) months from the date Seller received Buyer's purchase order; otherwise, Seller's standard prices in effect on the date such Goods are received by Buyer shall apply, and to the extent that Buyer has already paid the Prices to Seller for such Goods, Buyer shall pay the difference, if any, between such standard prices and the Prices. Should Buyer not purchase the quantity of Goods agreed to be purchased as part of the purchase order and should the lower quantity purchased justify a higher unit cost per Goods than as originally quoted, Seller reserves the right to adjust the price for the Goods already delivered to Buyer to the higher cost per part for the quantity of the Goods actually purchased.

5. Taxes. Prices do not include any taxes, freight, duties or levies (including, but not limited to, export, sales, use, excise, or value-added taxes) that may be applicable to the Goods. If applicable, such taxes, duties, freight, and levies will be added by Seller to the Prices and will be paid by Buyer.

6. Terms and Method of Payment. Terms are one-hundred percent (100%) of the Prices on or before the date of shipment, except where satisfactory open credit is established in Seller's sole discretion, in which case the terms will be net thirty (30) days from the date of shipment. The amount of credit or terms of payment may be changed, and credit may be withdrawn by Seller at any time for any reason. If the Goods are delivered in installments, Buyer shall pay for each installment in accordance with the terms of payment set forth herein, and Buyer's obligation to pay for such installment shall accrue regardless of whether the remaining installments are delivered. If Buyer fails to make any payment when due, Seller reserves the right to suspend or cancel performance under any or all purchase orders or agreements under which Seller has extended credit to Buyer or pursue any other remedy available to Seller. Seller's suspension of performance may result in a rescheduling delay contingent on current product availability. In addition, Buyer will pay Seller interest on any payments not received by Seller when due at the rate of 1.5% per month or the maximum rate allowed by law, whichever is less.

7. Contingencies. Seller is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure event or contingencies or causes beyond the reasonable control of Seller, including, but not limited to, war, civil unrest, pestilence, shortage of labor, fuel,

raw material or machinery or technical or yield failure. Production and deliveries may be allocated by Seller in its sole and reasonable discretion in the event of a shortage of Goods.

8. Substitutions and Modifications of Goods. Seller may modify the specifications of the Goods, provided such modified Goods substantially conform to this contract.

9. Returns and Restocking Fees. Buyer may request the return of some or all of the Goods provided that the Goods (i) are not custom designed for Buyer, (ii) are not deemed to be non-cancelable or non-returnable by Seller, (iii) have not been used or damaged in any way and remain in their original, unopened packaging; and (iv) are the latest version of the Goods then made available by Seller. Seller in its sole discretion shall determine whether to accept or reject Buyer's request to return any part of the Goods. A twenty five percent (25%) restocking fee will be applied based on the original purchase price of the Goods, or on the standard price for the Goods in effect on the date of the return, whichever is higher.

10. Warranties. Except as otherwise provided in the purchase order to which these Terms are attached, Seller warrants to Buyer only (and not to any entity who takes possession of the Goods from Buyer), that for a period of one (1) year from date of shipment, the Goods (a) will be free from material defects in workmanship and materials and (b) will substantially conform to Seller's published functional specifications for the Goods. Any software contained in the Goods shall be subject to the warranty and limitations of warranty which are set forth in the documentation accompanying the Goods, as well as the limitations set forth in Section 10 of these Terms. Notwithstanding the foregoing, Seller makes NO WARRANTY as to Goods to the extent they consist of or contain experimental or developmental Goods, all of which are supplied "AS-IS". Extended warranty coverage and/or terms are available from the Seller at an additional cost. THE WARRANTIES SET FORTH HEREIN SHALL NOT BE ENLARGED OR OTHERWISE AFFECTED BY, AND NO OBLIGATION OR LIABILITY OF SELLER SHALL ARISE OR GROW OUT OF, SELLER'S RENDERING OF TECHNICAL ADVICE OR SERVICE TO BUYER. EXCEPT AS SET FORTH IN THIS SECTION, SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

11. Remedies. Seller's sole and exclusive liability and Buyer's sole and exclusive remedy, for any breach of the warranties set forth in the previous section shall be (at Seller's option) to repair or replace the Goods causing such breach, or to credit Buyer's account the amounts actually paid by Buyer for any non-conforming Goods provided that (i) Buyer promptly notifies Seller in writing upon discovery that such Goods failed to conform to such warranties, and provides a detailed explanation and documentation of any alleged deficiencies, (ii) Buyer obtains a return merchandise authorization (RMA) from Seller, (iii) Buyer at its cost returns such Goods during the applicable warranty period to Seller's plant from which Goods were shipped, and (iv) Seller's examination of such Goods discloses that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If Seller elects to repair or replace such Goods, Seller shall have a reasonable time to make such repairs or replace such Goods, and such repaired or replaced Goods shall be warranted for the remainder of the original warranty period. Such repair, replacement, or credit shall constitute fulfillment of all liability of Seller to Buyer whether based in contract, tort, indemnity, statutory provision or otherwise. If Seller's examination of goods does not find that the alleged deficiencies actually exist or if the alleged deficiencies were caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing, then, at Seller's discretion, Seller may ship Goods back to Buyer at Buyer's expense.

12. Consequential Damages Waiver. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, SELLER WILL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S AGGREGATE LIABILITY IN CONNECTION WITH THE GOODS AND THIS CONTRACT SHALL NOT IN ANY EVENT EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO SELLER HEREUNDER FOR THE AFFECTED GOODS.

13. Legal Compliance. Buyer at all times shall comply with all applicable federal, state and local laws and regulations. The Goods covered by this contract may fall within the group of "strategic" electronic products that are wholly or partly of U.S. origin or technology, the export of which is subject to export license control by the U.S. government. Therefore, prior to exportation, Buyer agrees to obtain any licenses which may be required under the applicable laws of the U.S., including the export administration act and regulations. Buyer shall also, at its own expense, obtain and arrange, and as appropriate maintain in full force and effect, all governmental approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary or advisable for any and all uses of the Goods by Buyer including, but not limited to, any environmental or health and safety laws.

14. Cancellation. (a) Buyer may cancel its order for the Goods upon (a) no less than thirty (30) days' advance written notice to Seller prior to the scheduled shipment date. In such event Buyer shall be liable for cancellation charges which shall include a price adjustment based on the quantity of Goods actually delivered, and all costs, direct or indirect, (including the restocking fee) incurred and committed for this contract by Seller together with a reasonable allowance for prorated expenses and anticipated profits. Such cancellation charge shall in no event be less than ten percent (10%) of the dollar amount of sales cancelled. (b) Unless otherwise specified on the face hereof, all Goods must be released no more than three (3) months and shipments scheduled no more than six (6) months from the date of Seller's receipt of Buyer's purchase order; otherwise Buyer's order for the Goods may be cancelled by Seller and Buyer shall be liable for cancellation charges as provided herein. (c) If, in Seller's judgment, Buyer's financial condition does not justify the terms of payment specified herein, Seller may cancel Buyer's order unless Buyer immediately pays for all Goods which have been delivered and pays in advance for all Goods to be delivered.

15. Non-Waiver of Default. In the event of any default by Buyer, Seller may decline to make further shipments. If Seller elects to continue to make shipments, Seller's action shall not constitute a waiver of any default by Buyer and shall not in any way affect Seller's legal remedies for any such default.
16. Applicable Law. The validity, performance and construction of these Terms shall be governed by the laws of the State of California, without regard to its conflicts of law provisions. With the exception of Seller's rights to obtain injunctive relief from any court of competent jurisdiction, all actions and proceedings relating to or arising out of this Agreement shall be brought only in the U.S. District Court for the Northern District of California, San Jose Division, or the Superior Court of California for the County of Santa Clara, and the parties hereby acknowledge and submit to exclusive jurisdiction of and venue in such courts. The U.N. Convention on contracts for the International Sale of Goods shall not apply to the Goods or this contract.
17. U.S. Government Contracts. If the Goods to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government procurement regulation which are required by Federal Statute to be included in the U.S. Government subcontracts shall be incorporated herein by reference.
18. Assignment. Buyer may not assign (voluntarily, by operation of law or otherwise) this contract, or any of its rights or obligations thereunder, without the prior written approval of Seller.
19. Release of Information. Neither Seller nor Buyer shall publicly announce or disclose the existence of this contract or its terms and conditions, or advertise or make public announcements regarding this contract, without the prior written consent of the other party.
20. Modification. These terms constitute the entire agreement between the parties relating to the sale of the Goods and supersedes all prior or contemporaneous communications, representations or agreements either oral or written, with respect to the subject matter hereof. Any representations or statements of any kind made by any representative of Seller which are not stated herein shall not be binding upon Seller. No addition to or modification of any provisions upon the face or reverse hereof shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. No course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this agreement.
21. Severability. If any provision of this agreement shall be determined to be illegal or unenforceable, all other provisions shall remain in full force and effect.
22. Notice. All notices provided by Buyer pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery if addressed to the recipient at the addresses set forth in any order or agreement in which these terms are invoked.