

FINISAR TERMS AND CONDITIONS

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 THESE 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 DOCUMENTS 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 ANY ACCEPTANCE OF THE TERMS CONTAINED IN BUYER'S PURCHASE ORDER.

1. Title and Delivery. All Goods are sold Ex Works from the Seller's factory (IncoTerms 2010). Title, risk of loss and damage to the Goods 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. Seller reserves the right to make deliveries in installments. Upon the delivery of an installment, Seller has the ability to cancel or terminate any remaining installments within that purchase order without penalty. 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 export licenses, import duties, taxes, and any other expenses incurred or licenses or clearances required at port authority of shipment 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. Proof of delivery shall be obtained by Buyer from Buyer's designated carriers. 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. No order by Buyer, regardless of whether a deposit has been accepted, shall be binding upon Seller until the order has been accepted by Seller. The Seller Order Acknowledgement shall be deemed acceptance of the purchase order. In the absence of written agreement to the contrary, the means of shipment will be at the discretion of Seller.

2. Rescheduling. 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. A shipment of Goods may be rescheduled, any number of times, but at a maximum of one hundred and eighty (180) days from the originally scheduled shipping date. Once an order is rescheduled it automatically becomes non-cancelable and nonrefundable.

3. Prices. The prices listed on the face hereof (the “Prices”) or on Seller’s quotation are firm only if Buyer enters an order within the time specified on the quote or, if no time is mentioned, within thirty (30) days. Buyer must request shipment of the entire quantity of Goods ordered within twelve (12) months from date of order. Otherwise, Seller’s standard prices at time of shipment shall apply to those quantities actually delivered, even if already invoiced.

4. Taxes/ Shipping. Prices do not include any taxes, duties or levies (including, but not limited to, export, sales, use, excise, or value-added taxes) that may be applicable to the Goods. Prices also do not include shipping or freight costs, which costs shall be paid for by Buyer. Any sales, use or manufacturer’s tax which may be imposed upon the sale or use of Goods, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and paid by Buyer. Prices quoted are exclusive of tariffs, import duties and similar taxes. A surcharge will be imposed and invoiced to the Buyer for any such amounts paid by Seller or its agents in connection with shipments made with respect to the Goods listed. If Buyer is exempt from any taxes, Buyer shall furnish to Seller a valid tax exemption certificate, in a form acceptable to the taxing authority prior to shipment.

5. Terms and Method of Payment. Payment in full for the Goods is required on or before the date of shipment, except where satisfactory open credit is established at Seller’s sole discretion, in which case the payment will be due 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.

6. Contingencies. Seller is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure events or contingencies or causes beyond the reasonable control of Seller, including, but not limited to, strikes, natural disasters, war, civil unrest, terrorist acts, 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.

7. License to Use Software.

a. Definition. As used herein, the term “Software” means any computer programs in any form that are the Goods, contained in the Goods or that are otherwise provided in connection with the Goods.

b. Scope. Seller grants Buyer a nontransferable, nonexclusive license to use Software

consistent with the Terms herein and subject to any separate Seller software agreement, including an end user license agreement (EULA), specifically directed to the Software. Unless otherwise agreed via a separate Seller software agreement or EULA, Buyer has the right to use the Software at any one time only on a single processing unit of the class and model for which the Software is provided in connection with the Goods.

c. Fees. Unless otherwise agreed, Seller licenses Software for either periodic or onetime license fees. The onetime fee entitles Buyer to a perpetual right to use the Software subject to the terms of this Section.

d. Termination. The Software license term granted herein begins when the Seller delivers the Software to Buyer and continues for the specified term unless Buyer or the Seller terminates the license as described below or Buyer violates any obligations under this Section. Buyer may terminate a periodic license at any time by providing sixty (60) days advance written notice. The Seller will refund the unapplied portion of any advance payment. Onetime fees are not refundable. The Seller may terminate a periodic license at the end of a billing period by giving Buyer at least thirty (30) days advance written notice. When the license ends, Buyer agrees to immediately stop using the Software and either return all copies to the Seller or certify to the Seller that Buyer has destroyed them.

e. General. Buyer may not copy Software, or transfer, disclose, sublicense or distribute it to any party without the Seller's written consent. The Seller will consent to Buyer's transfer of Software only to parties that sign the then current form of the Seller's software license agreement or EULA and pay any applicable fees. Buyer must retain copyright notices and proprietary legends on all copies of Software in Buyer's possession. Software remains the property of the Seller or its licensors.

f. Other Companies' Software. The Seller may provide Buyer with Software that bears the logo or copyright of another company. These Terms apply to that Software unless the Software is provided with a license agreement (including a "shrink-wrap" license) from the other company, in which case the terms of the other company's agreement apply.

8. Warranties. Except as otherwise provided in an order acknowledgement 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 twelve (12) months from date of shipment, the Goods will be free from material defects in workmanship and materials and will substantially conform to Seller's published functional specifications for the Goods effective at the time of the sale. 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 or contain experimental or development Goods, all of which are supplied "AS IS". Extended warranty, coverage and/or terms are available 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 PLACE LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY.

9. 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. Seller shall at its sole discretion may retest and/or replace the reported faulty products, as specified by Seller. If the replacement products fail within the warranty period, Buyer is entitled to get a working replacement. Buyer will supply all identifying shipping documents and use for return shipment Seller's original packaging in order to avoid any deterioration of the Goods. In addition, Buyer will enclose supporting data detailing the nature of the defect. 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 (including negligence), indemnity, statutory provision or otherwise. If Seller's examination of such 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 such Goods back to Buyer at Buyer's expense.

10. Consequential Damage. TO THE MAXIMUM EXTENT PERMISSIBLE UNDER

APPLICABLE LAW, SELLER WILL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTIONS 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 THESE TERMS OR WITH RESPECT TO ANY PERIOD BEYOND THE WARRANTY PERIOD SET FORTH IN SECTION 7 SHALL NOT IN ANY EVENT EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO SELLER HEREUNDER FOR THE AFFECTED GOODS IN SUCH PURCHASE ORDER GIVING RISE TO SUCH LIABILITY.

11. Limitations. Neither the acceptance of any order, nor sale of components, Goods or any parts thereof hereunder confers on the Buyer a license under any patent rights or proprietary information or any other entity covering or relating to (i) the Goods, or (ii) the structure of any device to which the components or parts may be applied, or (iii) a process or machine in connection with which they may be used.

12. Compliance With Laws and Export Restrictions. The commodities, technology or software that were exported from the United States were done so in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Buyer shall comply with all laws, rules, regulations, governmental requirements and industry standards applicable to the purchase, sale, leasing, licensing, marketing, demonstration, installation, servicing, repair or use of the Goods provided by Seller. Buyer shall not export any Goods to any jurisdiction without first obtaining all necessary export and import permits and clearances and in no event shall Buyer export any Goods or technical data in violation of any applicable law or regulation, whether foreign or domestic. Buyer agrees not to distribute the Goods, Seller technical data or any part thereof to any person if Buyer has reason to believe that such person intends to export, reexport or otherwise take the same to, or to use the same in, any of the prohibited destinations of any applicable laws of the United States.

13. Compliance with Anti-Bribery Laws. Buyer agrees to fully comply with the U.S. Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd1, et. seq. and all other anti-bribery laws including, but not limited to, the U.K. Bribery Act (2010), PRC Anti-Unfair Competition Law, and PRC Criminal Law, Article 164. Buyer agrees that it shall not give, pay, or offer to give or pay, money or anything of value, directly or indirectly, to any private or governmental official, political party or party official, or any candidate for political office for the purpose of obtaining or retaining business, directing business to any person or entity, securing any illegitimate business benefit, or securing any improper or illegal advantage on behalf of itself, Seller, or any third party. Buyer agrees to immediately inform Seller of any violations or suspected violations of any anti-bribery law, including the FCPA, Bribery Act, Anti-Unfair Competition Law, or Article 164, Criminal Law. Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all liability including, without limitation, all costs, expenses, claims, damages, fines, and penalties, and any and all other amounts owed to any party, including governmental entities, based on any finding by any governmental authority or acknowledgement by Buyer that Buyer, or any

party affiliated with or controlled by Buyer, violated, intentionally or otherwise, the anti-bribery laws of any jurisdiction.

14. Cancellation. Buyer may cancel its order for non-custom Goods upon no less than thirty (30) days written notice to Seller prior to the originally 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 under the purchase order 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. 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. Buyer may not cancel its order for custom Goods after Seller's acceptance of the Buyer's purchase order.

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 such 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. Buyer agrees that the exclusive jurisdiction for Buyer bringing any dispute arising out of or in connection with these Terms lies with the courts of Santa Clara County California, United States of America and Buyer consents to such jurisdiction and venue. Notwithstanding the foregoing, Seller shall always be permitted to bring any action or proceeding, and/or seek injunctive or equitable relief, against Buyer in any other court having jurisdiction over the Buyer. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Goods or these Terms.

17. U.S. Government Contracts. If the Goods to be furnished under these Terms are 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) these Terms, or any of its rights or obligations there under, without the prior written approval of Seller.

19. Confidentiality. Any drawings, data, designs, software programs or other technical information supplied by Seller to Buyer in connection with the sale of the Goods shall remain Seller property and be held in confidence by Buyer. Such information shall not be reproduced or disclosed to others without Seller's prior written consent.

20. Entire Agreement; 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

that 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 these Terms.

21. Severability. If any provision of these Terms shall be determined to be illegal or unenforceable, such provision shall be modified to the minimum extent necessary to make the provision legal and enforceable while maintaining the provision's intent. All other provisions shall remain in full force and effect.

22. Notice. All notices provided by Buyer pursuant to these Terms shall be in writing and shall be deemed delivered on the date of personal delivery if addressed to the recipient at the address set forth in any order or agreement in which these terms are invoked.

23. Hazardous Applications. Seller's general policy does not recommend the use of its products in life support, medical, automotive, transportation or industrial applications wherein a failure or malfunction of the product may directly threaten life, injury, loss of significant amounts of property or result in catastrophic failure. Accordingly, in any use of the Goods in life support systems or other applications where failure could threaten life, injury or catastrophic losses, the Goods should only be incorporated in systems designed with appropriate redundancy, fault tolerant or backup features. Regardless, per these Terms, for all use of the Goods in life support, medical, automotive or industrial applications Buyer assumes all risk of such use and indemnifies Seller against all damages.