

TERMS AND CONDITIONS OF SALE AND LIMITED WARRANTY

The following terms and conditions of sale and limited warranty govern all purchases of systems, upgrades, and non-system items ("Products") from ChipBLASTER, Inc. ("CHIPBLASTER") by Buyer ("Buyer" or "You"). If Buyer has entered into a contract directly with CHIPBLASTER for the supply of CHIPBLASTER Products, the terms of that contract shall supersede any terms herein which are inconsistent with that contract. For ordering parts and services, please refer to CHIPBLASTER Parts and Services Terms and Conditions.

1. AGREEMENT

Acceptance of Buyer's purchase order is conditional upon Buyer's assent to the terms and conditions printed herein. Buyer's acceptance of any CHIPBLASTER system or other Product shall be conclusively deemed assent to the terms and conditions herein. CHIPBLASTER's failure to object to any terms or conditions stated in Buyer's purchase orders, forms or other communications from Buyer will not be a waiver of the provisions hereof and no other document, including Buyer's terms and conditions of purchase, will be part of this transaction, unless specifically agreed to in writing by CHIPBLASTER.

2. PAYMENT TERMS

Unless otherwise agreed by CHIPBLASTER, payment terms are:

For U.S. domestic sales, at CHIPBLASTER's option, either:

- 100%, net 30 days from shipment; or
- Payment in advance of shipment.

For international sales, at CHIPBLASTER's option:

- Acceptable Letter of Credit; or
- As stated on the Invoice.

CHIPBLASTER also reserves the right to require C.O.D. payment, a letter of credit, or other security for payment if CHIPBLASTER determines that such terms are required to assure payment to CHIPBLASTER. CHIPBLASTER reserves the right to impose a late penalty fee of 1.5% per month for all past due balances.

3. PRICES

Unless otherwise provided, all prices are EXW CHIPBLASTER's place of business for domestic sales, and for international sales, EXW CHIPBLASTER or EXW CHIPBLASTER warehouses. Prices are exclusive of shipping costs, insurance, and any applicable Taxes (defined below). All price quotations are valid for 30 days unless noted otherwise. Published list prices are subject to change without notice.

4. SHIPMENTS AND TITLE TRANSFER

All purchase orders are subject to acceptance by CHIPBLASTER. Unless otherwise provided on the attached acknowledgement, all shipments are EXW CHIPBLASTER's place of business for domestic sales; for international sales, shipments are EXW CHIPBLASTER or EXW CHIPBLASTER warehouses, INCOTERMS 2000. Title to all Products shall be deemed to pass to the Buyer upon delivery of the Products to the carrier at point of shipment. CHIPBLASTER reserves the right to select the method and routing of transportation and the right to make delivery in installments unless otherwise specified at the time of order. CHIPBLASTER will provide estimated shipment dates upon acknowledgement of Buyer's purchase order. Shipment dates on CHIPBLASTER quotations are approximate only.

Buyer shall assume all risks of loss and responsibility for the cost of shipping and insurance, regardless of the fact that shipping or insurance may have been arranged by CHIPBLASTER on Buyer's behalf. Any freight or delivery charges paid by CHIPBLASTER on shipments to Buyer will be passed on to Buyer, and shall be in addition to the price of goods. CHIPBLASTER has the right to cancel any order or to refuse or suspend shipment for Buyer's failure to meet payment terms on any outstanding invoice.

5. INSPECTION

Buyer shall examine each shipment of CHIPBLASTER Product immediately upon receipt and inform CHIPBLASTER of any shortage, visible defect or incorrect product shipments in writing within 7 days of receipt. If no discrepancies are reported by Buyer in writing within 7 days of receipt, the shipment shall be deemed delivered complete and defect free and Buyer may not dispute such shipment.

6. INSTALLATION

If CHIPBLASTER installs its products, the Buyer is responsible for providing facilities and utilities per the CHIPBLASTER site requirement guide prior to the arrival of the CHIPBLASTER installation team. In addition, the Buyer is responsible for moving the CHIPBLASTER system components to the installation site and providing the necessary facilities and equipment to position it for assembly. All monitoring and controls of utilities are the responsibility of the Buyer. If installation is not performed within 30 days of delivery due to reasons within Buyer's responsibility or control, the system will be deemed accepted.

7. ACCEPTANCE

The acceptance of systems which do not include custom solutions (applications, engineering, etc.) will be based upon a demonstration of successful operation of the system. In case of an applicable custom acceptance requirement agreed by CHIPBLASTER (as noted in the final CHIPBLASTER quotation), Buyer shall perform the custom acceptance requirement without delay.

Notwithstanding the foregoing, unless Buyer has notified CHIPBLASTER of its rejection in writing within 30 days after shipment, Buyer will be deemed to have accepted the Product at the end of such 30-day period.

8. LIMITED WARRANTY

a. Warranty Period. For a new or remanufactured system to be installed by CHIPBLASTER, the warranty period shall be one year from acceptance. For upgrades, the warranty period is 90 days from acceptance.

b. During the Warranty Period, CHIPBLASTER warrants that:

1. All Products meet specifications published by CHIPBLASTER appropriate to the model and options purchased as of the shipping date or agreed in writing between Buyer and CHIPBLASTER;
2. All Products will be free from defects in materials and workmanship or defects caused by ChipBLASTER; and
3. The Product complies with all safety and environmental regulations and standards of the United States federal government or any international certification in effect on the shipping date specified by CHIPBLASTER or agreed to in the accepted Purchase Order.

c. For any failure covered by this limited warranty, CHIPBLASTER shall repair or replace, at CHIPBLASTER's option, the defective system or component. CHIPBLASTER will provide services during normal business hours (Monday through Friday, 8AM – 5PM local time). Additional charges apply for services scheduled during times other than normal business hours. Buyer shall promptly notify CHIPBLASTER of any failure that occurs during the Warranty Period and allow CHIPBLASTER access to the CHIPBLASTER system in its usual working condition and environment for warranty repair or replacements. Failure to provide such notice or access shall relieve CHIPBLASTER of its warranty obligations. Buyer shall also allow CHIPBLASTER to perform two preventive maintenance (PM) visits during the Warranty Period.

d. Repair or replacement of a defective system or its components is the sole and only remedy under this Warranty. The replacement part may be a new or remanufactured part which is equivalent to new in performance. In case of replacing a defective component, CHIPBLASTER will warrant the replacement part for the remaining Warranty Period or hours carried by the original system.

e. During the Warranty Period, replacement parts will be shipped on a no-charge basis on condition that all defectives parts must be returned immediately upon receipt of replacement parts. Failure to return the defective parts promptly will result in an invoice for the full price of the replacement part.

f. Notwithstanding the above, CHIPBLASTER provides no warranties (a) on consumable items as identified by CHIPBLASTER; (b) on any system or portion thereof which is based on the Buyer's; larger system of which the CHIPBLASTER Product is only a component; and (c) non-CHIPBLASTER supplied replacement parts.

g. This limited warranty is void if failure has resulted from:

1. Misuse, mishandling, accident or neglect, noncompliance with CHIPBLASTER specified system operating environment or operation specifications, abuse and misapplication;
2. Improper packing or handling of the system during relocation by Buyer;
3. Unauthorized modification to the system or part, attempts to install or de-install or perform unauthorized maintenance or repair by any person that is not CHIPBLASTER FSE; or
4. An act or event beyond CHIPBLASTER's reasonable control and without CHIPBLASTER's fault or negligence, including but not limited to fires, explosions, floods, earthquakes, power outage or inappropriate transportation, acts of God, war or terrorism.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. BUYER'S EXCLUSIVE REMEDY FOR BREACH OR WARRANTY IS REPAIR OR REPLACEMENT, AT CHIPBLASTER'S OPTION. ANY LAWSUIT BY BUYER AGAINST CHIPBLASTER, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, ARISING OUT OF OR RELATING TO WARRANTY CLAIMS REGARDING THE SUBJECT PRODUCT, SHALL BE FILED WITHIN TWO YEARS FROM SHIPMENT OF THE SUBJECT PRODUCT BY CHIPBLASTER.

9. LIMITATION OF LIABILITY

NOTE; All warranties will be considered void if Chipblaster filters and consumables are not exclusively used during the warranty period.

IN NO EVENT WILL CHIPBLASTER, ITS OFFICERS, EMPLOYEES, OR AGENTS BE LIABLE FOR LOSS OF REVENUE, PROFIT, OR LOSS OF DATA, SUBSTITUTE GOODS, BUSINESS INTERRUPTION, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE PRODUCTS OR OTHERWISE AND EVEN IF CHIPBLASTER OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CHIPBLASTER'S OR ITS SUPPLIERS' OR LICENSORS' LIABILITY TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, OR OTHERWISE, EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10. PATENT INFRINGEMENT

CHIPBLASTER shall defend any lawsuit brought against Buyer to the extent such lawsuit is based on a claim that any Product furnished by CHIPBLASTER to Buyer infringes any patent of the United States, provided that CHIPBLASTER is notified promptly in writing and given full and complete authority, information, and assistance for the defense of the lawsuit. CHIPBLASTER shall not be responsible for any compromise made without its consent or for damages arising out of any suit which Buyer has not given CHIPBLASTER timely opportunity to defend. If an infringement claim is made or if CHIPBLASTER believes a claim is likely to be made, CHIPBLASTER may at its option: (a) modify the Product so that it becomes non-infringing, or (b) remove the Product and refund to Buyer the purchase price less a reasonable allowance for use. CHIPBLASTER shall not have any liability to Buyer under any provision of this clause if: (a) the claim is based upon the interconnection or use of the CHIPBLASTER Product in combination with A product or other devices not made by CHIPBLASTER; (b) the claim was based upon use of the CHIPBLASTER Product in any manner for which it was not recommended by CHIPBLASTER; or (c) the infringement arises from a design or specifications provided to CHIPBLASTER by Buyer.

THIS SECTION 12 SETS FORTH CHIPBLASTER'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS RELATING TO CHIPBLASTER PRODUCT OR COMPONENTS.

11. SOFTWARE LICENSE

Any CHIPBLASTER and third party software or firmware (collectively "Software") delivered by CHIPBLASTER to Buyer hereunder is licensed, not sold. CHIPBLASTER grants to Buyer a non-exclusive, nontransferable license to use the Software only in executable object code and only for the purpose of operating the Product. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon the Software or allow others to do so, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Buyer shall not make or distribute unauthorized copies of the Software, and shall acquire no rights of ownership in the Software. Title to and ownership of the Software and all extensions, enhancements and modifications thereof shall remain at all times with CHIPBLASTER and/or its licensors.

12. INTELLECTUAL PROPERTY OWNERSHIP

Subject to any license rights expressly granted herein, CHIPBLASTER retains all right, title and interest in all of its patents, trade secrets, trademarks, copyrights, software, inventions, technology, ideas, concepts, know-how, tooling, techniques and other proprietary materials, intellectual property and confidential information.

13. CONFIDENTIALITY

Buyer understands and agrees that CHIPBLASTER Products embody, utilize or otherwise contain CHIPBLASTER confidential and proprietary information and trade secrets ("Confidential Information"). Certain of the Confidential Information are apparent upon visual inspection of the Products. Other Confidential Information can only be discerned upon observation of the operation or the disassembly of the Products, or by reverse engineering. Except to the extent and in the circumstances expressly provided by law, Buyer agrees, represents and warrants that it shall not (or permit others to) reverse engineer, manufacture, decompile, or create derivative works of, any Products without CHIPBLASTER's prior express written consent. Buyer shall not allow any third party to take possession of or to inspect, observe any operation of, or disassemble any Product or any portion thereof, or take any photograph or recording of the Product or the operation thereof. If as a result of applicable law, Buyer is entitled to decompile the Product in order to obtain information necessary to render the Product interoperable or compatible with other products or software ("Permitted Objective"), Buyer shall first notify CHIPBLASTER of such requirements and give CHIPBLASTER the opportunity to provide the information necessary to achieve such Permitted Objective without undertaking such action. If such information is provided, Buyer must use it to achieve the Permitted Objective only.

Buyer shall use reasonable care, and not less than the same care it exercises with respect to its own confidential and proprietary information, to protect the Confidential Information against unauthorized use, loss, theft or disclosure. Buyer shall not disclose or describe to any third party, directly or indirectly, under any circumstances or by any means, any Confidential Information without CHIPBLASTER's prior written consent. Buyer will not be in breach of this section if disclosure of Confidential Information is made pursuant to subpoena or other compulsory judicial or administrative process, provided that Buyer promptly notifies CHIPBLASTER of such subpoena or other compulsory process, and provides reasonable assistance, so that CHIPBLASTER may seek a protective order or take such other action it deems necessary to protect its interest.

"Confidential Information" does not include any information concerning CHIPBLASTER that Buyer can demonstrate by written evidence (a) is now or becomes generally known to the public by lawful means and without breach of any confidentiality obligation; (b) is disclosed by Buyer with CHIPBLASTER's prior written consent to unrestricted disclosure; (c) was known to and reduced to writing by Buyer without use of any Confidential Information prior to the date of this Agreement; (d) is independently developed by Buyer without use of any Confidential Information; or (e) is lawfully obtained by Buyer from a third party.

14. FORCE MAJEURE

CHIPBLASTER's performance of any obligation hereunder shall be excused by any event beyond its reasonable control, including without limitation inclement weather, strikes, governmental laws, regulations or interruptions thereof, war, equipment breakdown, interruption of transportation, and delayed deliveries to CHIPBLASTER from CHIPBLASTER's suppliers which delays or prevents CHIPBLASTER's performance or makes performance commercially impractical due to unreasonable difficulty, expense, or risk of injury or loss.

15. EXPORT CONTROL

Buyer shall at all times comply with the United States laws and regulations governing export control. Buyer shall not use, lease, or sell any CHIPBLASTER Product in any country, or to any purchaser or lessee in any country, other than the country of destination specified in Buyer's order, except in a manner expressly permitted by such laws and regulations.

16 TAXES AND DUTIES

Unless specifically provided otherwise in writing, prices do not include federal, state, local, or foreign taxes, charges, fees, imposts, levies, duties, tariffs, or other assessments of any kind or nature imposed by any government ("Taxes"). Buyer shall be responsible for payment of all Taxes on the sale of the Products.

17 INDEMNIFICATION

Buyer shall indemnify and hold CHIPBLASTER harmless, including costs and attorney's fees, from any claims by employees, distributors, or customers of Buyer arising from the sale, lease or use of the Product sold by CHIPBLASTER or of other systems of Buyer which incorporates this Product, unless the claim arises from the sole negligence of CHIPBLASTER.

18 GOVERNING LAW

For U.S. domestic sales and sales in the Americas, the validity, interpretation and performance of these terms and conditions and any purchase made hereunder shall be governed by the laws of the State of Pennsylvania, USA, without regard to Pennsylvania conflict of law principles. Except to the extent that invoking the jurisdiction of another court is necessary to enforce (a) any security interest in Products or (b) any judgment or order entered in Pennsylvania, any legal action arising out of this purchase and sale shall be prosecuted exclusively in Pennsylvania, USA. Both parties hereby submit to the jurisdiction of the courts located in Pennsylvania over each of them personally in connection with such litigation, and waive any objection to venue in such courts and any claim that such forum is an inconvenient forum.

For international sales, if Buyer is located in Europe, German law shall apply to the validity, interpretation and performance of these terms and conditions and any purchase made hereunder. If buyer is located in China, the Chinese law shall apply. If Buyer is located in Korea, the laws of the Republic of Korea shall apply. If Buyer is located in Taiwan, the law of the Republic of China shall apply. For all other Buyers in Asia, the laws of Singapore shall apply. The courts in the above countries shall have exclusive jurisdiction to hear all matters arising out of this purchase and sale.

19. GENERAL

These terms and conditions constitute the entire agreement between CHIPBLASTER and Buyer. No modifications, changes, additions or amendment to the terms and conditions or promises, representation, or warranties that differ in any way from these terms and conditions herein shall be binding on CHIPBLASTER unless such modifications, changes, waivers, additions or amendments are in writing and signed by a duly authorized representative of CHIPBLASTER.

The waiver of any breach or default hereunder shall not constitute the waiver of any subsequent breach or default. In the event of any default by Buyer, CHIPBLASTER may decline to make further shipments. If CHIPBLASTER elects to continue to make shipments, such action shall not constitute a waiver of any default by Buyer or in any way affect CHIPBLASTER's legal remedies for such default.

If any term or condition hereof shall to any extent be invalid or unenforceable, the remainder of these terms and conditions shall not be affected thereby and each term and condition shall be valid and enforced to the fullest extent permitted by law.

Buyer shall not assign the performance obligations or any rights hereunder without the prior written consent of CHIPBLASTER. Subject to the foregoing, the terms and conditions shall bind and inure to the benefit of the respective parties hereto and their successors and assigns.