



Standard Terms and Conditions of Sale

Topaz Systems, Inc.

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Table of Contents

Overview..... 3

Orders and Sales 3

Product, Software, and Developer Support..... 4

Prices and Taxes 4

Delivery and Title..... 4

Payment..... 5

Purchase Money Security Interest 5

Acceptance>Returns 5

Testing..... 6

Intellectual Property 6

Limited Warranty 6

Limitation of Liabilities..... 8

Exports 9

Force Majeure 9

General 10

Overview

These Standard Terms and Conditions (these “T&Cs”) govern the sale of products by Topaz Systems, Inc., California corporation (herein “TOPAZ”) and its affiliates, distributors, or resellers (“Product or Products”), and provision of services (“Services”) by TOPAZ and its affiliates, distributors, or resellers (TOPAZ and its affiliates together referred to herein as “Seller”). The customer for any such Products or Services is referred to herein as “Buyer.” These T&Cs take precedence over Buyer’s supplemental or conflicting terms and conditions, if any, to which notice of objection is hereby given. Neither Seller’s nor any of its affiliates’, distributors’ or resellers’ commencement of performance or delivery shall be deemed or construed as acceptance of Buyer’s supplemental or conflicting terms and conditions. Seller’s failure to object to conflicting or additional terms will not change or add to the T&Cs herein. Buyer’s acceptance of the Products and/or Services from Seller and/or its affiliates, distributors, or resellers shall constitute acceptance of the provisions contained in these T&Cs. These Standard Terms and Conditions of Sale are subject to change without notice.

Orders and Sales

All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller’s written consent. All orders must identify the Products, unit quantities, applicable prices and requested delivery dates of the Products being purchased. Seller may in its sole discretion allocate Products among its Customers.

Buyer acknowledges that Seller may at its sole discretion make direct sales to any customers, end-users, dealers, resellers, or distributors without limitation. Unless Buyer is an authorized distributor or reseller, Products purchased hereunder are only to be used by Buyer for Buyer’s own use and are not to be resold unless expressly agreed in writing by Seller. If Buyer is a distributor, it may only sell products to Seller authorized resellers. If Buyer is a reseller, it may only sell to end users for their own use. Buyer agrees that it will not purchase Products from any source other than Seller or a Seller authorized distributor or reseller. Buyer may not, without express written permission from Seller, private label, sell, or represent Products under a different part number than the TOPAZ part number.

Buyer represents and warrants that there are no confidentiality, exclusivity, reseller, distribution, or any other agreements or obligations involving Buyer or any affiliate of Buyer that would be violated, breached or interfered with by Buyer purchasing product directly from Seller, or by Buyer’s compliance with or performance of any terms, limitations or covenants contained herein.

Product, Software, and Developer Support

Product, software, and developer support is provided via the contact means provided on the TOPAZ website. Support is available to bona-fide developers, currently-authorized distributors and resellers, and/or original-owner end-users of Products that have been purchased through Seller-authorized distributors and resellers, or directly from Seller or Seller-approved sources.

Prices and Taxes

The prices of the Products are those prices specified on the front of the invoice and do not include transportation, insurance, taxes, duties or customs fees, which Seller will itemize separately on Product invoices. Pricing for undelivered Products may be increased in the event of an increase in Seller's cost, change in market conditions or any other causes beyond the Seller's reasonable control. Price quotations shall automatically expire in thirty (30) days from the date issued, or as otherwise stated in the quotation. Buyer is solely responsible for all sales, use, value-added and similar taxes.

If Buyer wishes to claim a tax exemption, Buyer must give Seller a tax exemption certificate and any other required documentation, in each case acceptable to the relevant taxing authority.

Delivery and Title

All deliveries will be made "EXW," (INCOTERM 2000). Title to Products and all risk of loss, damage, or destruction passes to Buyer at the Seller facility that is the point of origin, regardless of shipment address or other similar information stated on the invoice or other shipping documents. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery, nor shall the carrier be deemed an agent of the Seller. A delayed delivery of any part of an order does not entitle Buyer to any shipping credit, or to cancel other deliveries.

Payment

Buyer shall pay all invoices in US dollars. Time is of the essence. With Seller's written approval, payment may be made by money order, Letters of Credit, or wire transfer, and all fees related to such payment are borne by the Buyer, and usual terms are payment at the time of order acceptance. Extension of credit is at Seller's sole discretion, and credit policies may change at any time without notice to Buyer. Where Seller has extended credit to Buyer, terms of payment shall be net "number of days" days from date of invoice, without offset or deduction. Time is of the essence. On any past due invoice, Seller may impose a late charge of one and a half percent (1.5%) per month; the parties acknowledge that this late charge is reasonable to cover the handling and extra costs as a result of the late payment, and shall not affect Seller's ability to collect any overdue balances. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements. On all sales intended to be shipped overseas, there shall be no trade credit given, and payment must be received before delivery. In the event of default by Buyer such as nonpayment or late payments, Seller shall be entitled to costs, fees, and expenses associated with efforts to collect the unpaid sums, including but not limited to recovery of attorney fees, court costs and fees, and collections costs.

Purchase Money Security Interest

Except for shipments that are prepaid (payment with order), for the purpose of securing payment to Seller of the purchase price of the Product, all Products are shipped to Buyer subject to a purchase money security interest under the Uniform Commercial Code as enacted in the various states. This purchase money security interest also extends to the proceeds of such Products. Seller is authorized by Buyer to act as attorney-in-fact of Buyer to execute and record any necessary financing statements and other related instruments to protect or perfect such purchase money security interest.

Acceptance/Returns

Shipments will be deemed to have been accepted by Buyer upon delivery of the said shipments to Buyer unless rejected as set forth herein. Buyer shall perform all inspections and tests Buyer deems necessary as promptly as possible but in no event later than ten (10) calendar days after delivery of the Product, at which time Buyer will be deemed to have irrevocably accepted the Products. Any discrepancy in shipment quantity must be reported within ten (10) calendar days after delivery. Buyer may only reject a Product that fails to materially conform to its then applicable specifications by giving Seller, within ten (10) calendar days after receiving the Product, a written notice that specifies in reasonable detail the reasons for rejection. Buyer may return a properly rejected Product under this section for credit, replacement, or refund, at Seller's option. Buyer may not return Products without a return material authorization ("RMA") number. RMA valid for thirty (30) days from date issued.

Any product returned by Buyer due to Buyer's error may be subject to a restocking charge equivalent to thirty percent (30%) of the value of such Product as specified in Seller's invoice to Buyer, at Seller's sole discretion.

Testing

Buyer may request a laboratory test report on the Products from a U.S. based independent laboratory approved by Seller, with lab charges to be paid by Buyer (e.g., billed on the invoice from Seller to Buyer). Only the lab test results from such laboratory may be used as test results for the Products in any dispute between the parties; more specifically, no test results from a non-U.S. laboratory may be used for any purpose as between the parties.

Intellectual Property

All intellectual property, including but not limited to patents and patent rights; trademarks, trade names, trade dress, packaging and container designs, design rights, and all goodwill therein; copyrights and copyrightable works, inventions, trade secrets, know-how, and confidential business information embodied in, or used by Seller in the development, design, manufacture, marketing or sale of, the Products are the exclusive property of Seller or its supplier(s) (collectively "Intellectual Property"), and Buyer agrees not to use such Intellectual Property without Seller's express written consent. Buyer agrees not to claim rights in, and agrees not to register or attempt to register, anywhere in the world, any of the Intellectual Property of Seller or its suppliers.

Limited Warranty

Seller warrants that each Product will be free from material defects in workmanship and materials for the applicable warranty period for such Product ("Warranty Period"). Unless otherwise specified herein, the Warranty Period shall be one year from the date of original purchase.

MODELS COVERED BY A LIMITED 3-YEAR WARRANTY ARE SIGNATUREGEM MODELS 1X5, 4X5, LCD1X5, LCD4X3, LCD4X5, COLOR 5.7, CLIPGEM, AND KIOSKGEM MODELS. SIGLITE AND SIGLITE LCD PRODUCTS ARE COVERED BY A 2-YEAR LIMITED WARRANTY. ALL "COMBO" MODELS THAT INCLUDE FINGERPRINT, MSR, OR OTHER FUNCTIONS, GEMVIEW, AND ALL WIRELESS MODELS ARE COVERED BY A 1-YEAR LIMITED WARRANTY.

THIS WARRANTY APPLIES TO THE ORIGINAL PURCHASER (END-USER) ONLY AND IS NOT ASSIGNABLE OR TRANSFERABLE, SUBJECT TO THE FOLLOWING:

This warranty does not apply to any Product:

- (a) Which has been misused (including static discharge, improper installation, repair, accident, or use not in accordance with instructions provided by Seller), stored in a faulty manner, neglected, altered or modified (including “cosmetic” modifications), used with any accessories not supplied by Seller, or which Seller is not capable of testing under its normal test conditions.
- (b) Which has not been purchased from a bona-fide Seller-authorized reseller, Seller approved-source, or directly from Seller.

Seller’s sole obligation to Buyer for a Product failing to meet this warranty, and Buyer’s sole remedy, is limited to (at Seller’s election) (1) repair of the Product by Seller, or (2) refund of Buyer’s purchase price for such Product (without interest), or (3) replacement of such Product; a condition for availability of such remedy is that such Product must be returned to Seller, along with acceptable evidence of purchase, within the warranty period, with a valid Seller issued RMA number and incoming freight and other transportation, duty, taxes and insurance prepaid by Buyer.

Seller warrants a replacement or repaired Product only for Products purchased under the conditions above and only for the unexpired term of the warranty for the defective Product. Seller’s warranty shall not be enlarged by, nor shall any obligation or liability of Seller arise due to, Seller providing technical advice, facilities, or service in connection with any Product.

Repairs outside of warranty are available to the original purchaser (end user) only. Please contact Seller directly for terms and pricing of all non-warranty repairs and service.

THE WARRANTY AND REMEDIES STATED IN THIS SECTION 5 ARE EXCLUSIVE. ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES THAT THE PRODUCTS ARE IN COMPLIANCE WITH ANY LAWS OR REGULATIONS. NEITHER BUYER NOR ANY OTHER PERSON OR BUSINESS ORGANIZATION IS AUTHORIZED TO MAKE ANY WARRANTY OR ASSUME ANY OBLIGATION OR LIABILITY ON SELLER’S BEHALF IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF THE PRODUCTS.

Limitation of Liabilities

(a) BUYER SHALL NOT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, LOSS OF PROFITS OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, BUSINESS INTERRUPTION COST, LOSS OF DATAREMOVAL OR REINSTALLATION COSTS, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, PUNITIVE DAMAGES, INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, LOSS OF CONTRACTS OR ORDERS OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE AFFECTED PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT, WARRANTY, OR OTHERWISE. BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON:

1. SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, IF ANY, or
2. MODIFICATION OR ADULTERATION OF ANY PRODUCTS BY ANYONE OTHER THAN SELLER, or
3. USE IN COMBINATION WITH OTHER PRODUCTS.

THE REMEDIES OF BUYER SPECIFICALLY SET FORTH IN THIS AGREEMENT CONSTITUTE BUYER'S EXCLUSIVE REMEDIES FOR THE BREACHES BY SELLER TO WHICH THEY RELATE.

(b) BUYER WARRANTS THAT IT WILL NOT USE, OR KNOWINGLY PERMIT ANY OF ITS DIRECT OR INDIRECT CUSTOMERS TO USE, ANY PRODUCT IN ANY MEDICAL, NUCLEAR, AVIATION, NAVIGATION, MILITARY, OR OTHER HIGH RISK APPLICATION. BUYER FURTHER WARRANTS THAT IT WILL NOT SUBMIT ANY OFFER TO PURCHASE PRODUCTS WHICH BUYER KNOWS OR HAS REASON TO KNOW WILL BE USED IN THE PERFORMANCE OF A UNITED STATES GOVERNMENT CONTRACT OR SUBCONTRACT WHICH INCORPORATES FEDERAL REGULATIONS EXPRESSLY OR BY REFERENCE, INCLUDING WITHOUT LIMITATION THE FEDERAL ACQUISITION REGULATION (FAR), DEFENSE ACQUISITION REGULATION (DAR), ARMED SERVICES PROCUREMENT REGULATIONS (ASPR), AND COST ACCOUNTING STANDARDS (CAS). BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS AGAINST ANY LOSS, LIABILITY, OR DAMAGE OF ANY KIND THAT SELLER INCURS IN CONNECTION WITH A BREACH OF THE FOREGOING WARRANTIES. BUYER SHALL OBTAIN SELLER'S WRITTEN CONSENT PRIOR TO USING, SELLING, OR OFFERING TO SELL THE PRODUCTS FOR ANY OF THE USES SET FORTH IN THIS SECTION.

Exports

Buyer agrees and warrants that it shall comply, at its own expense, with the U.S. Foreign Corrupt Practices Act and all export or import laws, restrictions, national security controls and regulations of the United States and any applicable foreign agency or authority. For all Orders shipped outside the U.S.A., Buyer certifies that it will be the recipient of the Products to be delivered by Seller. Buyer is solely responsible for compliance with any export law and regulations, and with the laws and regulations of the destination (import) country. Buyer shall not export, import, or re-export, or authorize the export, importation or re-export of the Product in violation of any of such laws, restrictions, or regulations or without any license or approval required thereunder. Any and all obligations of Seller to provide Product shall be subject in all respects to such laws, restrictions, and regulations. Buyer agrees to indemnify and hold harmless Seller from any and all fines, claims, damages, losses, costs and expenses (including reasonable attorney's fees) incurred by Seller as a result of any breach of this section by Buyer.

Force Majeure

Seller is not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond Seller's reasonable control including, but not limited to, acts of God, natural or artificial disaster, riot, insurrection, war, acts of enemies, strike or other labor dispute, delay by carrier, shortage of Product or labor, acts or omissions of other parties, acts or omissions of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, acts of terrorism, delays in transportation or inability to obtain labor, materials or Products through its regular sources, which shall be considered as an event of force majeure excusing Seller from performance and barring remedies for non-performance. In an event of force majeure condition, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition without subjecting Seller to any liability or penalty, or Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

General

- (a) These T&Cs, any and all orders, and any and all disputes arising thereunder or relating thereto, whether sounding in contract or tort, shall be governed by and construed in accordance with the laws of the State of California without regard to the internal law of California regarding conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any legal action brought by Buyer with respect to these T&Cs or any orders shall be filed in the above referenced jurisdiction within one (1) year after the cause of action arises or it shall be deemed forever waived. These T&Cs shall be executed in the English language. In the event of any conflict between these T&Cs as written in the English language and any translation, these T&Cs written in English shall control. The parties acknowledge that they have read and understand this clause and agree willingly to its terms and conditions.
- (b) Buyer and Seller agree to settle by arbitration any controversy or claim between them, including without limitation those related to these T&Cs, any contract, and Product, whether based on contract, tort, fraud, misrepresentation, or other legal theory. A single arbitrator will conduct the arbitration in Irvine, California under the then current rules and supervision of the American Arbitration Association. Buyer and Seller will select an arbitrator from a panel of persons knowledgeable in semiconductor marketing or design or manufacturing, as applicable. The arbitrator will have the authority to award temporary and permanent injunctive relief, but may not award punitive or exemplary damages to either party. The decision and award of the arbitrator will be final and binding and may be entered in any court having jurisdiction. Buyer and Seller will pay their own attorney's fees associated with the arbitration, and will pay other costs and expenses of the arbitration as the rules of the American Arbitration Association provide. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision. The United States Federal Arbitration Act will govern the interpretation and enforcement of this section. If one party files a court action alleging claims subject to this section, and the other party successfully stays the court action or compels arbitration of the claims, or both, the party filing the court action will pay the other's costs and expenses relating to the court action, including attorney's fees.
- (c) Buyer may not assign its rights or delegate its obligations under these T&Cs without the prior written consent of Seller, which may be withheld in its sole and absolute discretion. Seller or its affiliates may perform the obligations under these T&Cs. These T&Cs are binding on successor and permitted assigns of the parties.
- (d) The finding that any provision of these T&Cs, or any subpart thereof, as invalid or unenforceable shall not affect the validity and enforceability of the remaining portions of the T&Cs. Seller's failure to enforce at any time any provision of these T&Cs will not be construed as a waiver of such provision or of any rights thereafter to enforce such provision. Any waiver by Seller of any of the terms and conditions of these T&Cs or any order must be in writing signed by an authorized representative of Seller.

- (e) Buyer may not (1) use the Seller trademark or trade name or (2) cause any advertising publicity, release, or other disclosure of information concerning or any contract with Seller without Seller's prior written consent.
- (f) The provisions of these T&Cs which by their nature are intended to survive fulfillment and/ or termination of any order between Seller and Buyer (including but not limited to representations, warranties, disclaimers, indemnifications, payment of obligations, remedies, forum selection and statute of limitations) shall survive such fulfillment and/or termination.
- (g) The parties hereto agree that these T&Cs and any order constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings and understandings, whether written (including any electronic record) or oral, regarding the subject matter hereof, are superseded by these T&Cs. Any changes to these T&Cs shall be in writing and executed by both parties. Furthermore, if there is a conflict of terms between these T&Cs and an Order, these T&Cs shall be the controlling document.
- (h) Unless covered by separate Non-Disclosure Agreement executed by the parties, Buyer acknowledges that all information and materials which come into Buyer's possession or knowledge in connection with this Agreement and which are marked, identified, accepted as confidential or proprietary, or may be deemed confidential or proprietary by its nature or by the circumstances of its disclosure ("Confidential Information"), consists of confidential or proprietary information the improper disclosure or use of which will be damaging to Seller. Therefore, Buyer agrees to hold all Confidential Information in confidence, to disclose Confidential Information only to those of its employees having a need to know, not to disclose Confidential Information to any other party, and not to use Confidential Information other than for the performance of this Agreement. Buyer agrees that it will not use any of Seller's Confidential Information, and to the fullest extent permissible under applicable law, will not modify, reverse engineer, reverse compile, reverse assemble, synthesize any Product or in any way use any Product for such purpose.