



Terms & Conditions of Sale Agreement

AGREEMENT TO TERMS. This Standard Terms and Conditions of Sale Agreement (this "Agreement") is made effective by and between Spirit America Corp dba Spirit Electronics, of 11202 North 24th Avenue, Phoenix, Arizona 85029, ("Seller"), Customer ("Customer"). Seller and Customer may also generically be referred to herein in the singular as "party" or collectively "parties." Customer's agreement with Seller ("Sales Order") includes Customer's purchase order as accepted by Spirit, all attached documents, data, notes, and regulations referenced therein, and this Agreement. This Agreement is communicated by attachment to Quotes provided by Spirit to Customer. Customer's acceptance of a quote and issuance of purchase order constitutes acceptance of this Agreement. Any modification or amendment of the Sales Order must be made in writing and signed by both Spirit and Customer.

- 1. Prices and Quotes.** Seller's prices are valid for a period of 30 days from the date of quotation. All quoted prices are in U.S. Dollars. Prices are one time only and shall not be considered as precedent for subsequent quotations. Seller reserves the right to amend or correct clerical errors or omissions found in quotations at any time and will not be held responsible for compliance with any such errors or omissions. Unless otherwise stated, prices quoted do not include freight charges and/or surcharges or any special handling requirements. Freight is FOB Origin. Attachment of additional lot and/or date code requirements and/or quality assurance clauses at time of Sales Order may affect price and/or delivery date. Sales Orders are subject to tariff increases where applicable. The current quote and pricing on all sales orders will be dynamic pricing and subject to increases dictated by the supplier. Customer is responsible for any and all additional fees, changes in exchange rate or clerical errors.
- 2. Order Changes.** If changes to the Sales Order result in changes including but not limited to cost, quantity, or expected delivery date, Customer shall allow for equitable and reasonable changes to price and/or expected delivery date. Sales Order is non-cancelable, and products and services therein are non-returnable ("NCNR") when quoted as NCNR by Spirit. Products and services that are NCNR may only be approved for return as outlined below.
- 3. Tariffs.** The purchase and fulfillment of this order may incur import duties or other governmental charges levied by customs or other regulatory bodies ("Tariffs"). Spirit Electronics shall endeavor to provide a reasonable estimate of any Tariffs potentially applicable to this transaction. However, Spirit Electronics makes no warranty or guarantee regarding the accuracy or completeness of said Tariff estimate. In the event that Tariffs are assessed on this order that were not initially calculated or disclosed to Spirit Electronics at the time of quotation, Spirit Electronics reserves the right to invoice the Customer for the full amount of said unpredicted Tariffs. Payment of such additional Tariff charges shall be the sole responsibility of the Customer and will be due in accordance with the standard payment terms outlined in the governing Sales Agreement.
- 4. Delivery.** Seller must approve Customer requests to reschedule orders when requests are made within 30 days of the scheduled ship date. Lead times are subject to change. When orders are given a Defense Priorities and Allocations System ("DPAS") rating, Seller or Customer shall give immediate notification in writing of any changes or impacts to expected delivery date. Title to products passes to Customer when carrier takes custody for shipment. Shipping method and selection of carrier shall be at Seller's discretion unless otherwise designated by Customer.
- 5. Payments and Taxes.** Customer is subject to approved credit; payment terms and credit limits are contingent upon Customer supplied and third-party information to build a customer credit profile. In addition to any other right or remedy provided by law, if Customer fails to pay for Goods when due, Seller has the option to treat such failure to pay as a material breach of this agreement and may cancel this agreement and/or seek legal remedies as described below under "Remedies on Default." Payment must be made via ACH using the Seller-provided instructions. Payments made via check or credit card are subject to a \$50 handling charge. Payments must be received no later than end of the business day on the due date of the applicable invoice. In the event the due date coincides with a weekend or federal holiday, payment must be received no later than the end of the next business day. If payment is not received by the due date, a late fee representing 3% of the original invoice amount will be assessed and added to the total outstanding amount due. Customer shall pay costs of collection, including without limitation, reasonable attorney's fees and the aforementioned late fees. The Seller reserves the right to suspend any other orders until past due amounts are settled.

- 6. Product Returns.** Customer shall obtain Seller approval for return of products in the form of a return material authorization ("RMA") number. Subject to the conditions stated herein, Seller will issue an RMA for returns due to product non-conformities (including but not limited to failure, damage or defects). Customer shall notify Seller in writing regarding any product non-conformance(s) within three (3) business days of Customer's receipt of product. After a period of three (3) business days from the date of Customer's receipt of product, Customer is considered to have accepted the products and will not be approved for an RMA based solely on product non-conformance. RMAs will also be issued by Seller for warranty claims and are subject to the conditions and limitations of warranty clause below. RMAs will not be issued for products due to damage or defect caused by Customer or any third party, such as a carrier or freight provider. Upon receipt of RMA number, Customer shall return products to Seller within 30 days, after which the RMA may be cancelled for failure to return product. Seller and original equipment manufacturer (OEM) shall be allowed to inspect returned product(s) to determine the probable cause, origin and/or responsibility for any failure, damage, defect, or other non-conformance(s).
- 7. Warranty.** Seller is not a product manufacturer and has not manufactured any product sold to Customer as part of Sales Order. Seller agrees to transfer the manufacturer's product and service warranties to Customer to the extent allowed by the manufacturer's warranty policy. All warranty terms and conditions shall be as specified by the product manufacturer, and Customer must make all warranty claims in writing within twelve (12) months of delivery of products or services. Seller warrants that all value-added work completed by Seller, including but not limited to inspections, testing, or packaging, shall meet Customer's written specifications on the Sales Order. Customer acknowledges that any value-added work in Sales Order may void manufacturer product warranties. Any Customer alteration of product or Customer testing that affects the form, fit, and/or function of the product after delivery shall void Seller's warranty.
- 8. Raw Materials.** When directed by Customer Purchase Order or quality clause attachment to perform testing, packaging, or value-added services not provided by the OEM, parts ordered from the OEM shall be considered raw materials subject to the terms of raw material processing herein. Customer acknowledges that Spirit is not the manufacturer of the raw material, nor is Spirit the manufacturer of any product that has completed value-added servicing. Customer acknowledges that use of raw materials or modification of raw materials by value-added services is at the Customer's sole risk, including but not limited to use or modification of raw materials that does not comply with OEM product specifications. Customer shall indemnify and hold Spirit harmless from any claims resulting from Spirit's completion of Customer-directed services or modifications performed on raw materials. Customer assumes ownership of raw materials upon delivery to a Third-Party Service Provider facility, other than iTest, Inc. Seller shall not be liable for the cost of raw materials consumed in the normal process of value-added services. Customer shall be financially responsible for any raw materials processing loss incurred during third-party value add service provision. Spirit transfers any OEM warranty on raw materials to Customer to the extent permitted by the OEM. Customer accepts that value-added testing, packaging, or other value-added services performed by Seller or a third party other than the OEM may void the OEM product warranty subject to the terms of that OEM's warranty. Seller warrants that services performed by Seller or in partnership with iTest, Inc., meet Customer requirements as defined in the Purchase Order. Spirit shall transfer all third-party service provider warranties to Customer to the extent permitted by the third-party service provider. Seller may invoice Customer for the value of raw materials at the time raw materials arrive at a third-party facility prior to the performance of value-added services. Invoiced value of raw materials shall be established on the Customer purchase order. Spirit shall invoice remaining charges for services performed upon shipment of completed value-added product to Customer.
- 9. Limitation of Liability.** In no event shall Seller be liable to Customer or any third party, whether in contract, tort or other legal theory, whether or not foreseeable and whether or not Seller has been advised of the possibility of such damages, for any special, indirect, incidental, consequential, punitive, exemplary, contingent or other damages that may arise out of Sales Order, including but not limited to, loss of revenue, profits, use or other economic advantage, including revenue, profits, use or other economic advantage not related to this Sales Order, loss of goodwill or customers, loss of data, loss of reputation, loss of use, cost of repairs, insolvency, loss of financing or manufacturing expenses. Seller's liability to Customer shall be limited to direct damages not to exceed the total dollar amount actually paid or payable by Customer to Seller per the Sales Order. Customer's remedy(ies) for non-conforming products shall be limited to product return and warranty claims(s) per the terms and conditions related thereto as specified in this Agreement. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law. Customer acknowledges that Seller would not enter this Sales Order without these limitations on its liability.

Customer acknowledges that the use of products in an environment in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage (High Risk Activities) may expose Spirit to the risk of any loss, expense, cost, liability, litigation and/or potential adverse verdict or judgment in relation to any use of its Products in High Risk Activities. Spirit and Customer agree that the sole responsibility of the utilization of Products sold to Customer shall exclusively rest with the Customer.

- 10. ITAR and Export Laws.** Sales Order products and related technical data is subject to the Export Control Laws of the United States Government. Products, drawings, documents, or other technical data in Sales Order may fall within the definition of the International Traffic and Arms Regulation ("ITAR"), which prohibits export of such data without license and authorization. Customer and Seller shall comply with ITAR requirements and all other applicable export laws and controls to prevent illegal or unauthorized disclosure or export of technical data, products, or services in Sales Order.
- 11. Environmental Compliance.** Seller is considered a distributor for purposes of environmental regulations, such as the European Union's regulations for Registration, Evaluation, Authorization, and Restriction of Chemicals ("REACH"). Seller agrees to provide product data and information required by environmental regulations as provided by the manufacturer or other subcontractor. Seller will make reasonable effort to obtain and provide required data and product information required to meet regulatory requirements but waives all responsibility for manufacturer or subcontractor data, reporting, accuracy, and/or compliance. Customer shall be responsible for product and reporting compliance with environmental regulations.
- 12. Waiver.** Seller terms and conditions shall supersede Customer terms and conditions unless Seller has otherwise agreed in writing. No failure or delay by Seller to exercise rights under these terms and conditions shall be considered a waiver of such rights, nor shall any partial exercise of rights prevent later or further exercise of rights herein.
- 13. Dispute Resolution.** Sales Order shall be construed and enforced in accordance with the laws of the State of Arizona. Any action, claim or dispute arising out of the Sales Order, or relating to the Sales Order, may be heard by any court of competent jurisdiction having jurisdiction thereof. The parties hereby expressly consent to the personal jurisdiction of the state and federal courts located in Arizona for any lawsuit filed arising from or relating to this Sales Order and expressly waive any and all objections to venue, including, without limitation, the inconvenience of such forum. The prevailing party in any litigation arising out of or relating to the Sales Order shall be entitled to recover its expenses, costs of litigation (including, without limitation, clerk, paralegal, consultant, and expert witness costs), court fees and expenses and reasonable attorneys' fees from the losing party, whether or not otherwise specifically awardable under any law or court rule.
- 14. Force Majeure.** Seller and Customer shall not be liable for delay or default of obligations under the Sales Order and these terms and conditions resulting from a force majeure including, but not limited to, man-made or natural disasters, extreme weather or environmental events, military or government actions, hostilities, riots, terrorism, criminal action, epidemic or pandemic, shortage of labor, labor action, material shortage, delay in delivery or transportation or other events outside of reasonable control of either party.
- 15. Revision Control.** All requirements, quality notes, documents, standards, and terms and conditions applying to the Sales Order shall be the version or revision effective at the time the Sales Order is acknowledged by Seller.
- 16. Entire Agreement.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
- 17. Amendment.** This Agreement may be modified or amended only if such modification or amendment is made in writing and signed by both Seller and Customer.
- 18. Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or

unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

- 19. Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. No course of dealing among any or all of the parties hereto shall operate as a waiver of the rights hereof.