



## OffPeak Technologies LLC

### • Terms & Conditions

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Version: December 2011

For the purpose of these Terms, "Seller" refers to OffPeak Technologies LLC

#### **Quotations**

Unless otherwise indicated on the quote, written quotations by the Seller shall expire automatically thirty (30) days after the date appearing on the quotation unless 1. There are other conditions noted on the quote, or 2. the Seller receives and accepts Buyer's order within that period. Prior to the expiration date any quotation is subject to change by the Seller at any time upon verbal or written notice to the Buyer.

#### **Acceptance of Purchase Orders**

Notwithstanding any contrary language in the Buyer's purchase order, each purchase order shall be subject to acceptance by an authorized employee of the Seller and each transaction shall be governed exclusively by these Terms and Conditions of Sale. Such acceptance is expressly limited to these Terms and Conditions of Sale, and any additional or different terms proposed by Buyer are automatically rejected unless expressly agreed to in writing by the Seller. No contract shall exist except as herein and above provided.

All sales are final, non-cancelable and non-returnable. The Seller makes no claim for the serviceability or usability of the product and relies on the customer to determine the suitability of the product and/or part(s) for the customer's use. Seller provides pre-sales hardware and software information as well as pre-order technical support to assist buyer, yet final responsibility remains with Buyer.

#### **Price Changes**

Prices are subject to change to the prices in effect at the time of delivery. Seller reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission. In the event of any design, specification, or ordered quantity changes representing a price increase, Buyer will be notified and afforded an opportunity to confirm.

#### **Delivery**

Delivery lead times are for reference only and are subject to change (with or without prior notice). A change in the referenced delivery time communicated in any Sales Order Confirmation / Invoice is the only acceptable reason for cancellation if the actual delivery times exceeds 8 weeks from the reference date. Design and/or specification changes are subject to review for possible adjustments to delivery. Order quantities subject to scheduled delivery dates must be mutually agreed upon.

#### **Taxes**

Any and all sales, use, or other permissible taxes assessed upon any sale or products sold shall be added to the purchase price of the products.

#### **Payment Terms**

Payment terms are payment in advance: 1. For all domestic orders (USA origination and destination), we accept most major credit cards, PayPal, checks, wire transfers, 2. For all international orders, (outside USA origination and destination) payment must be in advance and via wire transfer only, we do not accept and credit cards for this type of order. [Note: Other Terms are available and will be set on an individual basis for repeat Buyers (distributors, OEM, Integrators) after the Buyer submits a credit application form, provides at least three references and the Seller approves and grants the Buyer credit.]

#### **Packaging**

The cost of standard bulk packaging for shipment is included in Seller's price. Additional charges may be imposed for special domestic packaging, overseas packaging, or special marking performed at Buyer's request and agreed to by Seller.

#### **Shipment Terms**

Unless the Seller agrees otherwise all shipments shall be Ex Works (shipping point). Shipping charges will be added to the total of the order. Seller shall also be entitled to impose additional charges for the completion, at buyer's request, of forms with respect to shipping. Unless otherwise agreed, the shipment may be made by lots of reasonable commercial size as Seller deems appropriate.



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### **Risk of Loss I Damage**

Risk of loss or damage in transit shall be borne entirely by the Buyer at all times from the moment products are delivered to the carrier at Sellers location (domestic (USA) or any international production locations). For the purpose of these terms, Goods arriving from sellers international manufacturing location and within 7 working days re-shipped at sellers domestic (USA) locations for continuous onward delivery (domestic I international) are considered to be "in transit" with risk of loss I damage acceptance starting at the moment the goods have been delivered to the carrier at the original manufacturing location.

### **Delays or Default in Delivery**

Seller shall have no liability to the Buyer for the Seller's delay or default in delivery. Under no circumstances shall the Seller have any liability for penalties or other consequential damages of any kind resulting in whole or in part from the Seller's delay in delivering, or failure to deliver, any products to Buyer as agreed. Only a delay or default of delivery which exceeds 8 weeks from the referenced delivery date, as expressed in the Sales Order Confirmation or Invoice, shall be considered a valid reason for cancelation of the order with out penalty.

### **Intellectual Property Infringement**

With respect to all products manufactured to Buyer's specifications, Buyer shall indemnify and hold Seller harmless from and against any and all loss, cost, expense, claims, demands, suits and judgments arising from actual or alleged infringement of any third party intellectual property right. With respect to all other products sold by Seller, Seller shall defend any suit or proceeding brought against buyer on a claim that such a product, or any part thereof, directly infringes any third party intellectual property right, provided that Seller is notified promptly in writing and given all necessary information, assistance and authority to defend same. Seller shall pay all damages and costs awarded against Buyer as a result thereof. If as the result of such direct infringement, the court enjoins the use of any product, or part thereof, in the manner intended by Seller, Seller shall at its sole expense and option:

(a) procure for Buyer the right to continue using said product or part, (b) replace such product or part with a non-infringing product or part (c) modify said product or part so that it becomes non-infringing or (d) remove said product or part and refund its purchase price and transportation costs. Seller shall have no further liability for actual or alleged patent infringement except as provided herein.

### **Design and Technical Information**

Seller claims proprietary rights in the items and information associated with this order. Drawings and technical information are issued in confidence for engineering information and mutual assistance only and may not be publicly disseminated, reproduced or used by buyer without Seller's prior written consent and shall be returned when its purpose has been served.

### **Warranty**

Seller's warranty is set forth in Seller's Warranty Policy which is available on page 4 of this document. SELLER WILL HAVE NO OTHER OBLIGATION WHATSOEVER WITH REGARD TO THE GOODS EXCEPT AS STATED IN THE WARRANTY. THE WARRANTY IS EXCLUSIVE AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR LIQUATED DAMAGES.

### **Cancellation or Changes to existing delivery schedule**

Changes and/or cancellations to existing schedules or orders are subject to Seller's sole acceptance and any applicable cancellation charges (and possible increase in per piece price due to reschedules). Cancellation charges will be determined by the type of product and the stage of completion. Cancellation charges for special or custom products cannot be accepted. Seller will accept temporary holds on orders for rescheduling purposes for a period not to exceed fourteen (14) days. If at that time a reschedule is not received, Seller reserves the right to recommence shipments in accordance with the original schedule or cancel the order at its sole discretion.



## OffPeak Technologies LLC

### Returns

All sales are considered final, non-cancelable and no-returnable. No products shall be returned to Seller, whether for inspection, repair, replacement, or any other reason, without prior approval from Seller, expressed in a Seller provided RMA. Products and parts must be returned in new or like new condition with complete identification in accordance with our instruction or the shipment may not be accepted. All returns must be sent to Seller freight prepaid F.O.B. destination unless otherwise instructed. Where authorization has been obtained to return products and parts for reasons beyond warranty a minimum restocking charge of twenty five percent (25%) and any additional transportation charges will be applicable.

Product returns are limited to;

Wrong Product Ordered (WPO) - Returns due to "Wrong Product Ordered" are eligible for return within seven (7) days from date of delivery and require a RMA.

Dead On Arrival (DOA) - Any product found to be defective within seven (7) days of shipment shall be deemed Dead on Arrival (DOA). DOA products will be advance replaced and shipped via overnight express (where available) at no cost to the customer and require a RMA.

### Remedies

Any lawsuit or legal claim for breach of this order must be brought within six (6) months after the breach occurs.

### Currency

Unless otherwise indicated on the invoice, all payments are to be made in United States currency.

### Governing Law

The terms and conditions of this agreement shall be construed according to the laws of the state of Pennsylvania, USA.

### Software

Seller, or its supplier or licensor, if applicable, retains title to all software, computer programs and other software furnished with any goods. Buyer will use such software only in conjunction with the use or operation of such goods and only in accordance with applicable instructions and manuals furnished by Seller, or its suppliers or licensors, if applicable. Further, Buyer will not reverse engineer, decompile or attempt to discover or recreate any source code to any such software.

### Export Controls

Any product or technical data supplied by Seller under these Terms and Conditions are subject to United States Export Administration Act and regulations there under, which includes the licensing of certain products. It is the responsibility of Buyer and any exporter contracted used by Buyer to comply with the Act and Regulations. Buyer certifies that it will not export or re-export the product and/or technical data furnished hereunder, unless it fully complies with all laws and regulations of the United States, including but not limited to the United States Export Administration Act and Regulations.

### Technical Support

Seller provides basic technical support related to its products. Buyer acknowledges support to be adequate and limited to basic software explanation and education, providing cable diagrams, dimensional drawings and standard (general) demo applications with a maximum of 5 hours dedicated support time per completed and paid for order. Additional support time may be offered to buyer at a rate of \$100/hour (pre-paid with a minimum of 5 hours), this at the sole discretion of Seller and depending on the availability of resources. Unavailability of additional support time, free or at charge, does not constitute a valid reason for product return and / or cancellation of the order. Buyer furthermore acknowledges technical support not to include application development, driver development or software project development or systems integration tasks.



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### WARRANTY POLICY.

SELLER warrants each product to be free from defects in material and workmanship for a period of two years (24 months) for HMI products. The two year warranty period begins on the date of shipment from OffPeak Technologies. During this period, if a customer is unable to resolve a product hardware problem and the SELLER Technical Support determines the product is defective, a Return Material Authorization (RMA) will be issued. Following receipt of an RMA number, the Buyer shall return the product to the SELLER, freight prepaid. Upon verification of warranty, SELLER will at its option repair or replace the product and return it to Buyer freight prepaid. If the product is not under warranty, the Buyer may have the SELLER repair the unit on a fee basis or return it unrepaired. No services are handled or implied at the customer's site under this warranty. This warranty is voided if the customer uses the product in an unauthorized or improper way, or in an environment for which it was not designed.

In no event will the SELLER be responsible to the user in contract, in tort (including negligence), strict liability or otherwise for any special, indirect, incidental or consequential damage or loss of equipment, plant or power system, cost of capital, loss of profits or revenues, cost of replacement power, additional expenses in the use of existing software, hardware, equipment or facilities, or claims against the user by its employees or customers resulting from the use of the information, recommendations, descriptions and safety notations supplied by the SELLER.

The SELLER's liability is limited (at its election) to:

Refund of buyer's purchase price for such affected products (without interest)

Repair or replacement of such products, provided that the buyer follows the above procedures.

**DOA** - Any product found to be defective within seven (7) days of shipment shall be deemed Dead on Arrival (DOA). DOA products will be replaced and shipped via overnight express (where available) at no cost to the customer.

#### Standard warranty replacements

Buyer will provide the serial number of the product to the SELLER. If the Buyer and the SELLER determine the product is defective and within warranty, an RMA will be authorized. The Buyer will return the defective product to the SELLER. Upon receipt of defective product(s), warranty verification will include visual inspection and testing for normal wear and tear, alteration, and functional compliance of the SELLER'S product(s). Defective products will be repaired or replaced and shipped via UPS Ground within best effort of the SELLER. Customers will not be charged for warranty repairs. However, if a returned product does not meet warranty verification, then testing, repair, and/or shipping fees may apply. There are no understandings, agreements, representations or warranties, express or implied, including warranties of merchantability or fitness for a particular purpose, other than those specifically set out above or by any existing contract between the parties. Any such contract states the entire obligation of the SELLER. The contents of this document shall not become part of or modify any prior or existing agreement, commitment, or relationship.