

EMULATION TECHNOLOGY, INC.  
TERMS AND CONDITIONS OF SALE

1. Agreement: This Agreement relates to the sale by Emulation Technology, Inc. ("Seller") of Seller's products and services described on the "ET Invoice" (the "products") to the company named under the section "Bill To" ("Buyer"). This Agreement is made pursuant to that certain Value Added Reseller Supply Agreement by and between Seller and Buyer dated as of ----- 200x. (the "VAR AGREEMENT") and is expressly limited to the following terms and conditions set forth (in the VAR AGREEMENT and) on the ET Invoice. It is a condition of this Agreement that any provisions printed or otherwise contained in any request for quotation or purchase order from Buyer for the products hereunder which modify, add to, or are inconsistent with the terms and conditions set forth (in the VAR AGREEMENT and) in this Agreement shall have no force or effect and shall not constitute any part of the agreement of purchase and sale unless expressly accepted in writing by a duly authorized signatory of Seller. THIS AGREEMENT (AND THE VAR AGREEMENT) CONSTITUTE (S) THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER RELATING TO THE PRODUCTS AND SUPERSEDES AND MERGES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS BETWEEN THE PARTIES RELATING THERETO, THERE ARE NO UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES OF ANY KIND EXPRESS OR IMPLIED NOT EXPRESSLY SET FORTH HEREIN (OR THEREIN) NO AMENDMENT OR WAIVER OF ANY PROVISION HEREOF (OR THEREOF) SHALL BE BINDING UPON EITHER PARTY UNLESS SUBSEQUENTLY SET FORTH IN WRITING AND EXECUTED BY THE PARTY TO BE BOUND THEREBY.

2. Prices: All prices are quoted and payable in U.S. dollars. However prices are valid for only 60 days after the order acceptance unless Seller causes non-delivery during that period. Seller reserves the right to adjust prices due to legislative actions (such as, but not limited to surcharges), which are beyond Seller's control.

3. Payment Terms and Credit

(a) Invoicing and Payment. All invoices shall be due and payable net thirty (30) days from the date thereon. Buyer shall pay a late fee equal to one and one-half percent (1-1/2 %) per month or such lesser amount as may be permitted by applicable law calculated on a daily basis on all amounts not paid when due. Any check or remittance received from or for the amount of Buyer may be accepted and applied by Seller against any indebtedness owing by Buyer without prejudice to or the discharge of the remainder of any such indebtedness regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying any check remittance.

(b) Impairment of Credit worthiness: Seller may at any time if Buyer fails to make payments when due or otherwise defaults hereunder change any terms of payment, suspend credit extended to buyer, require partial or full payment in advance and delay shipment until such terms are met and pursue any other remedies available at law in such

event. If buyer refuses to accept such changes, any outstanding order may be cancelled without any liability to Seller. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding brought by or against Buyer under any bankruptcy or insolvency laws or their equivalent, Seller may cancel any order then outstanding without liability to Buyer.

(c) Grant of Security Interest

(i) Buyer hereby grants to Seller a purchase money security interest in collateral consisting of all of Buyer's right, title and interest in and to the following currently existing or hereafter acquired personal property of Buyer (1) All Products in buyer's inventory and (2) All proceeds of the Products, including without limitation all goods, accounts, contract rights, documents, chattel paper deposit accounts, instruments, cash and general intangibles arising from the sale lease, license or other disposition of the Products and all payments under insurance (whether or not Seller is the loss payee thereof) or any indemnity warranty or guaranty payable by reason of loss or damage to or otherwise with respect to Products or such proceeds thereof.

(ii) In addition to the grant of a purchase money security interest pursuant to Section 3(d)(i) above. Buyer hereby further grants to Seller a general security interest in the collateral described in Section 3(d)(i) above.

(iii) On request and without further consideration Buyer shall execute and deliver to Seller such financing statements and other documents and do all acts, as in Seller's judgment may be necessary or appropriate to establish and maintain a valid and prior security interest in the collateral described in Section 3(d)(i) above. On Buyer's failure to do so, Seller may sign any financing statement or other document on behalf of Buyer in a form satisfactory for filing with the appropriate government authorities, and Buyer hereby irrevocably appoints Seller as Buyer's attorney-in-fact for the limited purpose of executing on Buyer's behalf and filing with the appropriate governmental authorities one or more such financing statements or other documents.

(iv) Buyer grants the purchase money security interest pursuant to Section 3(d)(i) for the sole purpose of securing the purchase price of the products. That purchase money security interest and all rights accruing thereunder to Seller (including without limitation the right, by complying with applicable procedures, to obtain a first priority security interest in the Products) shall apply only those obligations of Buyer. The general security interest granted pursuant to Section (s) (ii) secures the performance of all indebtedness and other obligations, however created, now existing or hereafter arising, of Buyer to Seller including all obligations of Buyer to Seller under the Agreement. The grant of the general security interest under Section 3(d)(ii) shall not affect the validity of the purchase money security interest granted under Section 3(d)(i).

4. Delivery Date, Force Majeur. Seller will make every commercially reasonable effort to meet the delivery dates quoted. However, Seller shall not be liable for its failure to meet quoted delivery dates or otherwise perform any obligations under this Agreement if Seller's performance is prevented or delayed by unforeseen circumstances or due to causes beyond its reasonable control, including without limitation (i) fires, floods accidents, Acts of God, governmental laws or regulations, judicial orders, embargo, war, insurrection, riot, shortages of material parts, labor or power, or (ii) if any time products shall be curtailed or shut down by a strike, lockout, work stoppage or labor trouble at

Seller's or Seller's supplier's plant. In any such event, Seller shall have the right, without liability, to cancel any affected order or to extend the delivery date for any affected order or extend the time for performance of any other act for a period equivalent to the period of such delay. Seller shall have no obligation to buy in the open market any article to be used in Seller manufacture when the supplier thereof has defaulted in delivery.

5. Commercial Terms

- (a) Multiple Shipments: If this Agreement calls for more than one shipment of Products, each shipment shall constitute a separate sale under the terms and conditions of this Agreement and Buyer agrees to accept each shipment and pay each invoice in full when due at the contract prices regardless of controversies relating to other delivered or non-delivered Products. If Buyer fails to accept or pay for shipment, or in the event a dispute arises concerning Seller's performance hereunder then Seller may, without prejudice to any other lawful remedy and without any liability to Buyer (i) defer further performance hereunder until acceptance or payment by Buyer of all previous shipments or until the dispute shall have been resolved or (ii) terminate this Agreement with respect to any unaccepted or undelivered portion, in which case Buyer shall be responsible for any expense or loss sustained by seller in connection with this Agreement.
- (b) Taxes, Freight and Insurance: Buyer shall pay all transportation charges. Any freight, insurance or other transportation charges paid by Seller in connection with the Products subject to this Agreement shall be in addition to quoted prices for such Products, and Buyer shall reimburse Seller for the same whether or not such amounts are separately stated on the invoice. The prices stated herein also do not include any federal, state or local sales, use or excise taxes, customs duties, imposts or other assessments of any kind, value-added or similar taxes, which may arise from the manufacture, sale or shipment of the Products to Buyer and Buyer shall be responsible for any and all such taxes, duties or other assessments. If Seller has the legal obligation to collect any such taxes duties or other assessments, the appropriate amount shall be added to Seller's invoice to Buyer and paid by Buyer unless Buyer provides Seller with a valid exemption certificate authorized by the appropriate governmental authority. If for whatever reason Seller fails to collect any such amount from buyer and Seller becomes liable to pay any such taxes, duties, other assessments, or any penalties related thereto, Buyer shall immediately pay such amounts directly to the appropriate government authority or, if Seller is required to pay or has paid such amounts shall immediately pay such amounts to Seller.
- (c) Passage of Title and Risk of Loss: All prices are F.O.B. Seller's warehouse or facility identified on the front side of the "ET Invoice". Title and risk of loss or damage shall pass to Buyer on Seller's making delivery to a carrier at Seller's facility in good condition.
- (d) Shipping Instructions: The Products shall be shipped to the destination and in accordance with Buyer's instructions set forth on the front side of the "ET Invoice". In the absence of Buyer's instructions or if the Buyer's instructions are deemed unsuitable, Seller reserves the right to deliver the Products to Buyer in a

commercially reasonable manner but shall not be deemed thereby to assume any liability in connection with the shipment, nor shall the carrier be deemed to be Seller's agent.

6. Order Cancellations: In the event Buyer wishes to cancel this for any reason other than Seller's failure to perform in accordance with this Agreement, Buyer shall notify Seller of such cancellation in writing and, unless otherwise agreed to by Buyer and Seller, Buyer shall notwithstanding such cancellation purchase the following work-in process in accordance with the terms of this Agreement:

- (a) one hundred percent (100%) of the Products in process for delivery during the period 0-30 days following the date on which notification of termination is received.
- (b) fifty percent (50%) of the Products in process for delivery during the period 31-60 days following the date on which notification of termination is received.
- (c) twenty-five percent (25%) of the Products in process for delivery during the period 61-90 days following the date on which notification of termination is received and
- (d) with respect to such Products as Buyer and Seller shall have agreed in writing in advance to designate as custom Products, whether because of their unique nature and specifications or other factors relating to their manufacture or sale, one hundred percent (100%) of such custom Products in process.

7. Acceptance of Products. Within ten (10) business days after seller delivers any Products hereunder Buyer shall inspect such Products for conformity to the specifications applicable to such Products pursuant to this Agreement. Buyer shall immediately notify seller in writing of any non-conforming Products. Buyer shall request a Return Material Authorization ("RMA") from seller's Customer Service Representative. In all returns of non-conforming Products, Buyer shall forward such Products to Seller prepaid and shall otherwise comply with Supplier's standard RMA policies then in effect. Seller must receive each and every RMA within 30 days of issue date. An RMA Authorization Letter and a completed rejection report in a properly marked container must accompany RMA or Seller will not accept the return. Buyer's failure to so notify Seller and return such Products in accordance with Section 7 shall constitute Buyer's acceptance of such Product and waiver of Buyer's rights with respect to such non-conformity.

8. Limited Warranties Remedies: Seller warrants that all Products, at the time of delivery to a carrier for shipment and for a period of six months after a sale of such Products to an end user shall conform (to purchaser's specifications agreed to pursuant to the VAR agreement, if any or for standard Products of Seller,) to seller's published specifications for such Products in effect at the time of order acceptance. The warranty provided hereunder shall not apply to any nonconformity resulting from abuse, misuse alteration, neglect, unauthorized repair or installation of Products, improper or inadequate maintenance by Buyer, Buyer-supplied designs, software or interfacing operation outside of the specified environments or improper site, preparation or maintenance. The above warranty period shall not extend by the repair or replacement of Products pursuant of any of the above warranties. In the event of any non-conformity during the warranty period

and receipt by Seller of a notice of non-conformity, return of the non-conforming Products in accordance with Section 7 and Section 8 and verification of such non-conformity by Seller's quality control personnel, Seller will at its option either repair or replace the non-conforming Products or credit the purchase price for such non-conformity. Products Buyer shall deal directly with Seller for returns and repairs. Buyers shall prepay all freight and other shipping charges for Products returned to Seller for warranty service and if such non-conformity is confirmed. Seller shall prepay all freight and other shipping charges for any repaired or replaced Product Shipped to Buyer.

9. Disclaimer of Warranties: The warranty in Section 8 above is expressly in Lieu of any and all other warranties express or implied including without limitation any implied warranty of merchantability or fitness for particular purpose even if Seller has been informed of such purpose. No agent of Seller is authorized to alter or exceed the warranty obligations of Seller as set forth herein.

10. Limitation Of Liability And Remedy

- (a) Exclusion of Consequential Damages: Buyer Acknowledges and agrees that the amounts which Seller is charging hereunder do not include any consideration for assumption by Seller of the Risk of consequential or incidental damages which may arise in connection with use of the Seller's Products by Buyer or Buyer's customers. Accordingly Buyer agrees that Seller shall not in any event be liable for any indirect, special, incidental or consequential damages including without limitation personal injury, property damage, lost profits or other economic loss arising in connection with Seller's Provision or failure to provide such products. This limitation of liability will apply regardless of the form of action whether in contract or tort including negligence and independent of any failure of essential purpose of the limited warranty and remedies provided hereunder.
- (b) Limitation of liability: Seller's liability for breach of warranty shall not exceed the lesser of (i) the cost of correcting any non-conformities in the Products, or (ii) the cost of replacing any non-conforming Products with conforming ones. In no event (including unenforceability of the above limitations and independent of any failure of essential purpose of the limited warranty and remedies provided hereunder,) shall Seller's aggregate liability for damages under this Agreement exceed the purchase price previously paid by Buyer for the non-conforming Products under this Agreement. The parties acknowledge that the limitations set forth in this Section 10 are integral to the prices charged in connection with this Agreement and that were Seller to assume any further liability other than as set forth herein, such prices would of necessity be set substantially higher. Buyer expressly agrees that this limitation of damages and remedies shall constitute the exclusive remedies and measure of damages available to Buyer and all other remedies and measures of damages, which might otherwise be available under the law of any jurisdiction, are hereby waived by Buyer.

11. Infringement Indemnity: Seller represents and warrants that the use and sale of the Products hereunder by Buyer will not infringe the U.S. patent rights, copyrights, mask work right, trademarks or trade secret rights of any third party, provided, however that no such representation, or warranty is made with respect to any infringement which may result from the manufacture use or sale of Products in accordance with any specifications provided by Buyer to Seller. Hereunder Seller shall defend indemnify and hold harmless Buyer, its officers, directors, agents, employees and shareholders, from and against any and all loss, liability damage or expense (including without limitation reasonable attorney's fees, costs and expenses) incurred by Buyer as a result of, in connection with or arising out of any breach of the foregoing warranty by seller provided that Seller (i) is notified in writing within 20 calendar days of any suit or claims against Buyer and (ii) Buyer permits Seller to defend, compromise or settle the claim of infringement and gives Seller all available information, assistance and authority for settlement made without its written consent.

12. Notices: Every notice or other communication required or contemplated by this Agreement shall be delivered in writing to the party for which intended at its home office or principal place of business either by (i) personal delivery (ii) postage prepaid, return receipt requested, registered or certified mail, (iii) nationally recognized, overnight courier, such as Fedex or UPS, or (iv) facsimile with a confirmation copy sent simultaneously by any of the other methods described above. Notice by registered or certified mail shall be effective on the date officially recorded as delivered to the intended recipient by return receipt or equivalent, and in the absence of such record of delivery the effective date shall be presumed to have been the fifth (5<sup>th</sup>) business day after deposit in the mail. Notices delivered in person or sent by courier shall be effective on the date of personal delivery. Notices delivered in person or sent by courier shall be effective on the date of personal delivery. Notices delivered by facsimile shall be deemed to be effective on the date sent. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to which it was given

13. Software License

- (a) Retention of Title of Software: Notwithstanding any contrary provision in this Agreement, Seller retains all rights, title and interest in and to any computer software or firmware programs and any mask work rights provided to Buyer in connection with Products being acquired by Buyer hereunder (the "software")
- (b) Grant of License: Seller hereby grants to Buyer and to each of the persons to whom Buyer sells or leases Products for which Buyer also provides the Software, a non-transferable non-exclusive license solely to use the Software in connection with such person's own use of the Product. Buyer agrees that it shall not perform any of the following actions and further agrees that it shall require each such customer to agree, in writing, that such customer shall not perform any of the following actions (i) reproduce for use on any equipment other than the associated Product all or any portion of the Software: (i) reverse engineer, decompile or disassemble the Software: or (iii) disclose, sell, sublicense or otherwise

transfer or make available all or any portion of the Software to any other person, with Seller's prior express written consent.

- (c) Termination of License: In addition to any other remedy Seller may have, Seller reserves the right to terminate this license for any licensee who fails to comply with any term or condition hereof. This License shall also terminate at such time as such person shall permanently cease to use the Product for the purposes for which it was provided by Seller. Buyer agrees upon notice from Seller of any termination of this license and in accordance with any more specific directions from Seller, to deliver and to require each of its customers granted a license hereunder to deliver, immediately to Seller all Software copies thereof.

14. Government Contracting: If any Products are to be used in the performance of a United States Government contract or subcontract, Buyer shall notify Seller of the United States Government contract number on each purchase order and furnish Seller with copies of all applicable United States Government procurement regulations, which regulations will be incorporated into the Agreement solely with regard to the parties' performance in connection with Buyer's order for the United States Government contract or subcontract. Buyer agrees to hold Seller harmless from all losses, claims and expenses (including attorney's fees, costs and expenses) in connection with any actual or asserted violation of such procurement regulations where Buyer has failed to notify Seller of their applicability in the manner provided in this Section 14.

15. Miscellaneous

- (a) Governing Law: This Agreement shall be interpreted under and governed by the laws of the State of California applicable to contracts entered into and performed in California by California corporations, regardless of whether one or more of the parties hereto may now be or hereafter become a resident of another state or country. This Agreement shall not be subject to the 1980 United Nations Convention on Contracts for the International Sale of Goods.
- (b) Assignment: Neither this Agreement nor any right or obligation hereunder is assignable in whole or in part, whether by operation of law or otherwise, by either party without the express written consent of the other, and any such attempted assignment shall be void and unenforceable.
- (c) Arbitration: Attorney's Fees. All disputes arising between the parties in connection with this Agreement shall be resolved exclusively by binding arbitration in Palo Alto, California in accordance with the Commercial Rules of the American Arbitration Association and judgment upon the award entered by the arbitrators may be entered in any court having jurisdiction thereof. If any arbitral or judicial proceedings shall be commenced to enforce this Agreement or any arbitral award issued pursuant to this section 15 (c), the prevailing party in such proceeding shall be entitled to recover from the other party the reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such action or proceedings.

- (d) **Export Licensing Requirements:** Seller will obtain all export licenses and permits required by the US. Government to deliver the Products to Buyer and Buyer will obtain all licenses and permits required by any other Government. Each party will furnish any information and assistance reasonably required by the other party in connection with obtaining any such license and permits. Buyer agrees to comply with all applicable laws and regulations relating to the export or re-export of the Products, the direct product thereof, and technical data relating thereto, as those terms are defined under US. Law. Buyer shall hold harmless and indemnify Manufacturer for any damages resulting to Manufacturer from breach by Buyer of this Section 15 (d).
- (e) **Severability:** To the extent that any of the provisions of this Agreement are found by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provisions shall be modified or deleted in such a manner so as to make the Agreement as modified valid, legal and enforceable, and the balance of the Agreement shall not be affected thereby.
- (f) **Independent Contractors:** Except as other expressly provided herein, the relationship between the parties hereto is that of independent contractors and neither party shall hold itself out or have the authority to act as the agent of the other party for any purpose. Nothing contained herein shall be deemed to create any joint venture or partnership relationship between the parties.
- (g) **Subject Heading:** The subject heading of the Sections and subsections of the Agreement are included for the purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.