



General Terms & Conditions of Sale

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The following terms and conditions (the "General Conditions" or this agreement) apply to any sale of products (the "Products") by Blue Ember Technologies, LLC. (dba "Blue Ember Technologies").

1. GENERAL

THESE GENERAL CONDITIONS, TOGETHER WITH ANY NONCONFLICTING PROVISION IN BLUE EMBER TECHNOLOGIES' QUOTATION, ARE INTENDED BY THE PARTIES AS THE FINAL EXPRESSION, AND CONTAIN THE COMPLETE AND EXCLUSIVE STATEMENT, OF THE TERMS AND CONDITIONS OF THIS AGREEMENT SUPERSEDING ALL PREVIOUS OR SIMULTANEOUS COMMUNICATIONS EITHER ORAL OR WRITTEN. Any quotation by Blue Ember Technologies is an offer that may only be accepted in full by Purchaser. In the event the Purchaser's purchase order or other form states terms additional to or different from those set forth in this document, this writing shall be deemed notification of objection to such additional or different terms. Accordingly, this Agreement is expressly made conditional on Purchaser's acceptance and assent to the conditions contained on the face and reverse side hereof. Acceptance of the condition contained herein shall be deemed to have occurred at the earlier of (i) seven calendar days from the date specified on Blue Ember Technologies' acknowledgment form unless written notice of objection is received by Blue Ember Technologies prior to lapse of such seven day period, (ii) Blue Ember Technologies' identification of existing goods as goods to which this Agreement refers, or (iii) onset of Blue Ember Technologies' provision of future goods. This agreement cannot be waived, varied, modified, or amended except in a writing signed by authorized representative of Blue Ember Technologies, nor shall the Agreement be waived, varied, modified, or amended by any subsequent course of conduct between the parties.

2. PRICE

Unless otherwise stated, applicable prices for the Products sold hereunder are net FOB (INTERCOMS 1990) factory ("FOB"), with freight and insurance nonpurchase's account, and shall be those prices in effect at the time Blue Ember Technologies accepts Purchaser's order except as provided below. Because Blue Ember Technologies' prices are based on costs and conditions existing on the date of acceptance, prices are subject to change as those conditions change. Accordingly, all orders are subject to increase in price of materials and labor while completing the work hereunder.

3. TAXES

Prices exclude all duties, taxes, tariffs, or other governmental charges that now are, or hereafter may be, imposed upon the sale or use of the Products. All such duties, taxes, tariffs, or other charges paid by Blue Ember Technologies shall be for Purchaser's account. Any exemption claimed paid by Blue Ember Technologies shall be for Purchaser's account. Any exemption claimed from the application of such duties, taxes, tariffs, or other charges should be plainly designated on the face of orders placed with Blue Ember Technologies and accompanied by exemption certificates where required.

4. PAYMENT

Payment for Products is due as specified on the first page of Blue Ember Technologies' order acknowledgment. Blue Ember Technologies may require payment to be made through an irrevocable letter of credit in favor of and acceptable to Blue Ember Technologies and established by Purchaser at its expense.

5. DELINQUENT PAYMENTS

In the event Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay to Blue Ember Technologies the reasonable costs and expenses incurred by Blue Ember Technologies in connection with all actions taken to enforce collection or to preserve and protect Blue Ember Technologies' rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorney's fees, court costs and other expenses. In addition, to the extent permitted by Purchaser's local law, interest on all amounts unpaid after thirty (30) days may be charged at the annual rate of 1-½ percent per month or the highest rate permitted by law, whichever is lower. If any invoice is not paid when due, Blue Ember Technologies may suspend delivery of Products or other performance with respect to Purchaser without liability or penalty.

6. TITLE AND SECURITY INTEREST

Blue Ember Technologies reserves and Purchaser hereby grants to and creates in favor of Blue Ember Technologies, a first priority purchase money security interest in each Product (or the equivalent under Purchaser's local law), including all component parts added by modification or repair, and all proceeds from the sale thereof, until full payment is received. Purchaser agrees to sign upon request, and hereby authorizes Blue Ember Technologies to sign on its behalf and as its attorney in fact, any documents necessary to perfect Blue Ember Technologies' security interest. Upon resale, Purchaser agrees to take, and immediately assign to Blue Ember Technologies, a perfected security interest in each Product.

7. COMMENCEMENT OF FABRICATION

Blue Ember Technologies will not, and is under no obligation to, commence fabrication of any Products ordered here under until:

- a) All complete contract plans, drawings and specifications have been delivered to Blue Ember Technologies;
- b) All detail drawings submitted by Blue Ember Technologies have been finally approved by all authorities whose approval is required;
- c) Blue Ember Technologies has received all necessary information from other trades which affect or are related to our work or Products;
- d) Blue Ember Technologies shall have received after completion of (a), (b) and (c), reasonable notice to commence fabrication of such Products;
- e) All credits or debits for changes in quantity or design of material furnished shall have been accepted in writing by Purchaser;

8. SHIPMENT, DELIVERY & CLAIMS

Unless otherwise agreed in writing by the parties, shipment and delivery of the Products shall be made FOB. Accordingly, costs of shipment, insurance or similar charges shall be borne by the Purchaser. Delivery of the Products to the first carrier shall constitute delivery to Purchaser. As of delivery to the first carrier, risk of loss is transferred to Purchaser, and all claims for loss or damage in transit or for non-delivery shall be made by Purchaser against the carrier. Notwithstanding the FOB destination, Blue Ember Technologies reserves the right to select any mode of transportation. At Blue Ember Technologies' option, Products may be shipped in advance of requested shipment date or in installments or partial lots. Any delivery information (including time for shipment) is approximate. Blue Ember Technologies' sole responsibility will be to use reasonable commercial efforts to meet specified shipment dates. Purchaser expressly acknowledges that Blue Ember Technologies shall not be liable for any loss or damage resulting from a failure to deliver or delays in delivery caused by a labor dispute (including a strike, slowdown, or lockout), fire, flood, or governmental act or regulation, riot, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay or interruption of carriers, accidents, governmental regulations, including without limitation, failure to obtain export licenses, acts of God or other causes beyond Blue Ember Technologies' control.

NOTWITHSTANDING THE ABOVE, BLUE EMBER TECHNOLOGIES SHALL NOT BE LIABLE FOR ANY DAMAGE OR PENALTIES WHATSOEVER, WHETHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, RESULTING FROM BLUE EMBER TECHNOLOGIES' FAILURE TO DELIVER OR DELAY IN DELIVERY FOR ANY REASON.

9. INSPECTION

Within five business days of receipt of the Products, Purchaser shall inspect the Products to check for shortages or any other nonconformity. Unless Purchaser shall thereafter notify Blue



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Ember Technologies in writing of any nonconformity (other than that relating to loss or damage in transit, which claims shall be made directly to the carrier) within ten business days of inspection, Purchaser shall be deemed to have accepted the Products without any qualifications and cannot, thereafter, reject the Products for any reason. In any event, Products accepted and used shall be deemed to have been accepted in good condition and in compliance with the specification and order therefor.

10. CANCELLATION

This Agreement cannot be canceled or postponed by the Purchaser except with Blue Ember Technologies' consent and upon terms that will indemnify Blue Ember Technologies against loss. Accordingly, Purchaser shall pay Blue Ember Technologies the greater of (i) a charge equal to 10% of its total price or (ii) reasonable cancellation charges, Blue Ember Technologies' anticipated profit, and expenses already incurred by Blue Ember Technologies in performing or preparing to perform the work required by Purchaser's order, as invoiced by Blue Ember Technologies.

11. WARRANTY

Subject to the warranty limitation set forth in Section 12 below, Blue Ember Technologies warrants that the Products sold hereunder will substantially conform to the applicable specifications and will be free from defects in material and workmanship unconditionally for one (1) year after shipment FOB, under normal and proper use and service. Shop drawings prepared by Blue Ember Technologies and approved by Purchaser shall be deemed the correct interpretation of the work to be performed even when not consistent with the plans and specifications.

12. WARRANTY LIMITATION

The warranty and remedies for breach of warranty provided for in these General Conditions extend only to the original installation and do not cover, and Blue Ember Technologies shall not be liable for, (i) abnormal wear and tear or damage caused by improper installation, maintenance or use contrary to the instructions published by Blue Ember Technologies, (ii) storage of Products in a wet or damp area or unprotected from weather and other job conditions, (iii) any cause beyond the control of Blue Ember Technologies, including without limitation conditions caused by movement, settlement or structural defects of the building in which the Products are installed, fire, wind, hail, flood, lightning or other acts of God, international acts, accidents, negligence or exposure to harmful chemical pollutants or other foreign matter or energy, (iv) repair or damage caused by anyone except personnel authorized by Blue Ember Technologies, or (v) any scratches, abrasions or other damage to the finish of painted items after they leave the factory. Items repaired or replaced, and designs corrected under warranty are warranted only for the remainder of the original warranty period. Any general Product literature is for illustrative purposes only and does not constitute a warranty of any kind. Purchaser accepts full responsibility or the selection of the Products to achieve intended results.

THE WARRANTY SET FORTH IN SECTION 11 IS STRICTLY LIMITED TO ITS TERMS AND IS IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. REMEDY

Purchaser's sole and exclusive remedy, and Blue Ember Technologies' only obligation for breach of warranty for Products furnished hereunder, shall be, at Blue Ember Technologies' option, to repair or replace the defective item or part that fails within one year warranty period of Section 11, free of charge, provided that Purchaser promptly gives notice to Blue Ember Technologies of such failure, returns such item or part to Blue Ember Technologies, freight prepaid, and upon examination Blue Ember Technologies finds such to have been defective. Purchaser must pay for related costs of making the repair or replacement, including the costs of removal, installation or reinstallation of the Products. In the event Purchaser claims that the Products are defective, it must allow Blue Ember Technologies personnel access and permission to inspect the Products at the site of installation or use.

14. DISCLAIMER: LIMITATION OF LIABILITY, TIME FOR CLAIMS

Purchaser understands and agrees that Blue Ember Technologies shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES including but not limited to loss of profit or revenues, damage for loss of the use of the Products, damage to property, claims of third parties, including personal injury or death suffered as a result of use of Products or failure of Blue Ember Technologies to warn, or to adequately warn, against the dangers of the Products or to instruct, or to adequately instruct, about the safe and proper use of the Products whether or not Blue Ember Technologies has been advised of the potential for such damages. The total liability of Blue Ember Technologies to Purchaser from any cause whatsoever, whether arising under contract, warranty, tort, (including negligence), strict liability, products liability or any other theory of liability, will be limited to the lesser of Purchaser's actual damages or the purchase price paid to Blue Ember Technologies for the Products that are the subject of Purchaser's claim. However, this limitation of liability does not apply to damages resulting from personal injury caused by Blue Ember Technologies' negligence. All claims against Blue Ember Technologies must be brought within one year after the cause of action arises, and Purchaser expressly waives any statute of limitations which might apply by operation of law or otherwise.

15. RESALE OF PRODUCTS

Upon resale of any Products sold hereunder, Purchaser agrees to extend to its customers no greater warranties than those contained herein and limit its liability and remedies to the same extent as those set forth herein.

16. PURCHASER SPECIFICATION

Blue Ember Technologies assumes no liability for any errors or omissions in any specification provided by Purchaser, including any errors or omissions made by Blue Ember Technologies in the interpretation of any such specifications. Any items included in any specifications provided by Purchaser and not listed and priced on Blue Ember Technologies' proposal or invoice are not part of this Agreement. Purchaser hereby agrees, at its own expense, to defend, indemnify and hold harmless Blue Ember Technologies against any and all losses, costs, damages, claims, liabilities or expenses of any kind, including without limitation reasonable attorney's fees, arising out of or resulting from, directly or indirectly, any injury or death to persons or damage to property caused by the designs, or specifications or instructions provided by or required for Purchaser which are incorporated by Blue Ember Technologies in the Products.

17. INFRINGEMENT WARRANTY

If a claim is made that any Product sold hereunder infringes any product rights of another, Blue Ember Technologies will be responsible only for claims based on a valid U.S. Patent or copyright. Blue Ember Technologies will defend the claim and hold Purchaser harmless from any final award of damages in such a patent or copyright infringement claim, provided that Purchaser gives Blue Ember Technologies prompt notice of the claim and information, reasonable assistance and authority to defend and settle the claim. In the defense or settlement of the claim Blue Ember Technologies may: (i) obtain for Purchaser the right to continue using the Product; (ii) replace or modify the Product to be non-infringing; or (iii) recall the Product and refund the purchase price. The warranty shall not apply to claims based solely on any third-party parts incorporated in the Products, or to Products manufactured to Purchaser's designs, specifications or instructions, or to claims of infringement based on claimed rights other than patent or copyright, except that as to such other claims, Blue Ember Technologies at its option may elect to defend against such claims without warranty as to award of damages.

INFRINGEMENT WARRANTIES OR OBLIGATIONS NOT SPECIFICALLY STATED IN THIS SECTION ARE SPECIFICALLY DISCLAIMED.



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18. GOVERNMENTAL AUTHORIZATIONS

If the destination of any shipment made by Blue Ember Technologies hereunder is outside the United States, Blue Ember Technologies will be responsible for applying, in its own name, for any required U.S. export license, and Purchaser will be responsible for timely obtaining and maintaining any required import license, exchange permit or any other governmental authorization required for the import of the Products and the remittance of payments to Blue Ember Technologies. Blue Ember Technologies and Purchaser will assist each other when such help is reasonably possible.

19. EXPORT CONTROLS

Purchaser warrants that it is and will remain in compliance with all export and reexport requirements, including, but not limited to the Export Administration Act and regulations, the Arms Export Control Act and regulations, the Trading with the Enemy Act and regulations, and any orders and licenses issued thereunder (collectively the "Export Law"). Purchaser additionally warrants that it has not been, and is not currently, disbarred, suspended, prohibited or impaired from exporting, reexporting, receiving, purchasing, procuring, or otherwise obtaining any product, commodity or technical data regulated by any agency of the government of the United States. In particular, Purchaser hereby gives assurance that unless notice is given to and prior authorization is obtained as require by the Export Laws, Purchaser will not knowingly reexport, directly or indirectly, the Product or any technical data shipped by Blue Ember Technologies to Purchaser or the direct Product thereof to Country Groups Q, S, W, Y or Z (as defined in the Export laws) or any other prohibited country.

20. SEPARABILITY: INVALIDITY

If any portion of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid and unenforceable provisions will continue to be given effect and bind the parties hereto.

21. GOVERNING LAW

This instrument shall be deemed an agreement made under the laws of the State of Maryland governed by the laws of the State of Maryland without regard to its conflict of law's provisions and excluding the United Nations Convention for the International Sale of Goods. All actions arising hereunder shall be instituted in the State of Michigan.

22. SUCCESSION

The provisions of this Agreement shall bind and ensure the benefit of the successors and assigns of the parties hereto.