

MULTICOM STANDARD TERMS AND CONDITIONS

1. **General.** These terms apply to all products ("Products") sold by Multicom, Inc ("Multicom") and they represent the sole understanding between Multicom and Buyer identified on the front side hereto ("Buyer") with respect to the purchase of Products. Buyer's purchase order, if any, is solely for the purpose of requesting specific products, delivery dates, quantities and shipping destinations. Any provision of Buyer's purchase order (or other documents and communications) which in any way is inconsistent with or in addition to these terms shall not be binding on Multicom and are hereby rejected by Multicom.
2. **Price.** All prices published by Multicom may be changed at any time without notice. All prices are exclusive of transportation costs and all taxes including use, sales, property (ad valorem) and similar taxes. Buyer agrees to pay such taxes (except taxes based on Multicom's net income).
3. **Invoice and payment.** Multicom will invoice Buyer on the date the Product is tendered to the carrier at Multicom's facility or from Multicom's supplier facility in the case of drop shipments. All invoices will be due and payable in full in United States dollars immediately upon receipt of Multicom's invoice, unless otherwise provided on the front side hereof. If payment is not timely received, a service charge of one and one-half percent (1.5%) per month or the maximum permitted by law, whichever is less, shall be assessed on overdue payments. If, in Multicom's sole judgment, Buyer's financial condition does not justify continuation of shipment on the original terms of payment, Multicom may require full or partial payment in advance. If Buyer refuses to accept such change in credit terms, Buyer's order may, at Multicom's sole option, be cancelled without liability arising therefrom to Multicom, in whole or in part. Further, on delinquent accounts, Multicom shall not be obligated to continue performance under any agreement with Buyer. For sales to a Buyer having its principal place of business outside the United States of America, Multicom reserves the right to bill in either United States dollars or the currency of the country in which the Product is shipped. In the event Multicom invoices Buyer in a foreign currency, the rate of exchange will be that in effect on the date of invoice. In the event (i) of Buyer's bankruptcy or insolvency, (ii) that any proceeding is brought or threatened against Buyer under any bankruptcy or insolvency laws or their equivalent or (iii) that Buyer commences any proceedings or any proceedings are commenced against the Buyer wherein a receiver may be appointed, Multicom may cancel any order then outstanding without liability to Multicom and Multicom shall receive reimbursement from Buyer for costs incurred, including but not limited to attorney's fees, lost profit for Products so cancelled, and all other costs associated with the cancellation, direct and indirect, including without limitation costs for work in process or custom goods.
4. **Security Interest.** Multicom hereby reserves a purchase money security interest in the Products sold and the proceeds thereof, in the amount of the Product's purchase price. In the event of default by Buyer of any of its obligations to Multicom, Multicom shall have the right to repossess the Products sold hereunder. This security interest will be satisfied by payment in full. Buyer agrees to execute any document requested by Multicom to perfect the foregoing security interest.
5. **Cancellation. Restocking Fee.** Buyer may cancel Buyer's order provided written notice is received by Multicom at least sixty (60) days in advance of a scheduled delivery. If Buyer cancels any order or part thereof within such sixty (60) day period, Buyer agrees to pay to Multicom a restocking fee equal to twenty-five percent (25%) of the value of the order cancelled. Buyer agrees to pay such amount within five (5) days of the date of Multicom's invoice therefore.
NOTE: Special order items and non-stock items cannot be returned.
6. **F.O.B.** All sales are made F.O.B. Multicom's facility, or its suppliers' facility in the event of a drop shipment. Title and risk of loss shall pass to the Buyer upon tender by Multicom or its supplier to the carrier at the shipping point. All claims for damages must be filed directly with the carrier. The planned shipment date is an estimate only and Multicom will not be subject to liability for failure to ship on or before such date under any circumstances. Any carrier selected by Multicom shall not be deemed an agent of Multicom.
7. **Force Majeure.** Multicom shall not be liable for nonperformance or delays, under any circumstances, which occur due to any causes beyond its reasonable control. In no event shall Multicom be liable for any delay or re-procurement costs for failure to meet any shipment date. In case of Product shortages, Multicom reserves the right to allocate Products in a fair and equitable manner among all of its customers.
8. **Acceptance.** Buyer shall give written notice to Multicom of (i) discrepancies between the type and quantity of Product ordered and Product delivered or (ii) Product defects, within five (5) days after delivery of the Product to Buyer. Lacking such notice, the Buyer shall be deemed to have accepted the Product as delivered. No credit allowances for defective Products will be made or replacements shipped until it is established to Multicom's satisfaction, after suitable testing and inspection, that the Product was defective on the delivery date. Multicom reserves the right to make partial shipments, and invoices will be issued accordingly. Buyer may not reject a delivery by reason of partial shipment. If Buyer properly rejects a Product, Multicom will repair or replace the Product or issue a merchandise credit to Buyer for any amounts paid by Buyer for the Product. The foregoing shall be the Buyer's sole and exclusive remedy for Products properly rejected by Buyer.
9. **No Licenses Granted.** The sale of Products by Multicom does not convey any license, expressly or by implication, estoppels or otherwise, under any patent, copyright, trademark, or other intellectual property right. Multicom expressly reserves all its rights under such intellectual property rights.
10. **Limitation of Liability.** Multicom's sole responsibility to Buyer and Buyer's sole and exclusive remedy hereunder for all claims shall be limited to a refund or credit to Buyer of the purchase price, or to the repair or replacement of the Product, at Multicom's sole option. In no event shall Multicom be liable for Buyer's costs of procurement of substitute products or Buyer's inability to obtain substitute products. IN NO EVENT SHALL MULTICOM BE LIABLE FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION LOST PROFITS. HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, EVEN IF MULTICOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OR ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.
11. **Indemnification of Buyer.** Buyer shall defend, indemnify and hold harmless Multicom, its directors, officers, employees and agents from and against any claims, demands, causes of action, liabilities or expenses (including attorneys' fees and costs) for any personal or bodily injury, illness or death or property damage or any other claims, demands, allegations, damages, costs of liabilities arising out of or resulting in any way from Buyer's use, misuse or mishandling of the Products.
12. **Limited Warranty.** Multicom warrants to Buyer that the Product will be free from defects in material and workmanship and will perform substantially in accordance with the manufacturer's specifications. The standard manufacturer's warranty will apply and Multicom will not provide any additional warranty period. In the event of a breach of the foregoing warranty, Multicom, at its sole discretion, shall repair or replace the defective Product or refund the purchase price; provided, however, that the non-conforming Product is (i) returned during the warranty period and (ii) properly packaged and shipped, at Buyer's expense to Multicom's or other designated facility, in accordance with Multicom's Return Material Authorization Policy. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. Products which have been improperly handled or shipped, or which have been subject to abuse, misuse, accident, alteration, neglect, improper or inadequate maintenance, unauthorized repair, or improper installation are not covered by warranty. No warranty is made with respect to custom equipment or Products produced to Buyer's custom specification unless Multicom explicitly states the terms of such a warranty in the contract for such custom Products under a heading expressly referencing the term "Warranty". Buyer acknowledges that Buyer has selected on its own the Products as suitable for the Buyer's intended purpose and that Multicom makes no warranty with respect to such suitability for fitness of the Product for such purposes.
13. **Warranty Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED HEREIN, ALL PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY. MULTICOM SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING DESIGN WARRANTIES, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT. BUYER SHALL HAVE NO RIGHT TO MAKE OR PASS ON ANY WARRANTY ON BEHALF OF MULTICOM TO ANY THIRD PARTY.
14. **Miscellaneous.** The validity, performance, and construction of these terms shall be governed by the laws of the State of Florida. The United States Convention on contracts for the International Sale of Goods is specifically excluded from application. Buyer agrees to comply strictly and fully with all export controls imposed by any jurisdiction. In the event of litigation to enforce any rights hereunder, the parties will voluntarily appear before and hereby consent and submit to the exclusive jurisdiction of the courts for the State of Florida, Orange County and each party waives any venue objections to such courts. The prevailing party in any such litigation or related settlement negotiations shall be entitled to recover reasonable attorney's fees and expenses (including appeals). Buyer may not assign this agreement or any interest or right therein without Multicom's prior written consent, in its sole discretion. Any assignment without such consent shall be null and void. These terms may be amended or supplemented only by a writing that is signed by the authorized representatives of both parties. No term or provision of the terms will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. If any part of these terms is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of these terms will remain in full force and effect. Buyer hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for such warranties or representations as are specifically set forth herein. These terms shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing without Multicom's written consent. No representation, promise or condition not expressly provided in writing and signed by an authorized representative of Buyer and Multicom shall be binding on either party.