

LJ Relay General Terms and Conditions of Sale

1. **GENERAL.** These general terms and conditions of sale (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller) exclusively will govern the sale or licensing by Seller of all goods and services (including without limitation, hardware, training, maintenance, engineering, parts, repair and remanufacturing services – hereinafter, "Products") furnished to Buyer hereunder, whether such sale or licensing is effected by paper-based transactions or via facsimile or other forms of electronic data interchange ("EDI") or electronic commerce, and represents the entire agreement between Buyer and Seller with respect thereto. Buyer's receipt or acceptance of delivery of any of the Products ordered or purchased hereunder will constitute its acceptance of these terms and conditions. No addition or modification to these terms and conditions will be binding on Seller unless agreed to in writing signed by an authorized representative at Power & Relay Systems. Seller objects to and rejects other terms and conditions that may be proposed by Buyer or that appear on or are referenced in Buyer's purchase order or requisition that are in addition to or otherwise not consistent with the terms and conditions set forth or referenced herein.
2. **PAYMENT.** The price of the Goods or Services is the price stated on the face of this Order (the "**Price**"). Seller shall invoice Buyer for the Order within thirty (30) days of delivery or completion of. Unless otherwise stated in the Order, Buyer shall pay all properly invoiced amounts due to Seller within thirty (30) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order. Overdue invoices are subject to interest charges at the rate of 1.5% per month (subject to any limit imposed by applicable law).
3. **DELIVERY.** Seller shall deliver the Goods and/or perform the Services at the delivery point (the "**Deliver Location**"), and on the date (s) specified in this Order (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full within a reasonable time of receipt of the Order. Timely delivery is of the essence. If Seller fails to deliver the Goods or Services in full, on the Delivery Date, Buyer may terminate the Order immediately and Seller shall indemnify Buyer against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.
4. **TITLE AND RISK OF LOSS.** Unless otherwise specified in the Order, risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the Delivery Location.
5. **WARRANTY.**
 - (a) **Hardware:** Seller warrants that new hardware Products furnished here- under will be free from defects in material, workmanship and design for a period of ten (10) years from the date of invoice from Seller or its appointed distributor, as the case may be. Repaired or replacement Products provided as a result of this warranty subparagraph are similarly warranted for a period of twelve(12) months from the date of shipment to Buyer or the remainder of the original warranty term for that particular Product, whichever is longer.
 - (b) **Non-Warranty Factory Remanufacture, Repair and Field Exchange:** Seller warrants that non-warranty factory remanufactured or field exchanged hardware Products or repaired hardware Product components will be free from defects in material and workmanship for a period of one (1) year from the date of invoice from Seller or its appointed distributor, as the case may be. Repaired or replacement Products provided as a result of this warranty subparagraph are warranted for a period of thirty (30) days from the date of shipment to Buyer or the remainder of the original warranty term, whichever is longer.
 - (c) **Services:** Seller warrants that Products comprised solely of services (e.g., training, on-site repair, engineering and custom application programming services) will be performed by appropriately skilled personnel employed or retained by Seller.
 - (d) **Buyer Specifications/Compatibility:** Seller does not warrant and will not be liable for any design, materials, construction criteria or goods furnished or specified by Buyer (including that sourced from other manufacturers or vendors specified by Buyer). Any warranty applicable to such Buyer-specified items will be limited solely to the warranty, if any, extended by the original manufacturer or vendor directly or indirectly to Buyer. Seller does not warrant the compatibility of its Products with the goods of other manufacturers or Buyer's application except to the extent expressly represented in Seller's published specifications or written quotation.
 - (e) **Cumulative Remedies:** The rights and remedies under this Order are cumulative and are in addition to any rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in this Section, Seller will, at its sole cost, replace and repair the Goods or re-perform Services to Buyer's satisfaction.
 - (f) **General:** Warranty satisfaction is available only if (a) Seller is provided prompt written notice of the warranty claim and (b) Seller's examination dis- closes that any alleged defect has not been caused by misuse; neglect; improper installation, operation, maintenance, repair, alteration or modification by other than Seller; accident;

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or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electro- magnetic noise environment.

- (g) THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. Rights under the above warranties (subject to noted limitations) extend to Buyer's customers if Buyer is a Seller-appointed distributor for the Products.
6. **DISCLAIMER AND LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL NOT BE LIABLE FOR ANY BUSINESS INTERUPPTION OR LOSS OF PROFIT, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND. SELLER'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE COST OF THE PRODUCT(S) GIVING RISE TO THE CLAIM OR LIABILITY. SELLER DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT REQUIRED OF SELLER HEREUNDER. ANY ACTION AGAINST SELLER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION HEREOF AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING – STRICT LIABILITY) OR OTHERWISE, AND FURTHER WILL EXTEND TO THE BENEFIT OF SELLER'S VENDORS, APPOINTED DISCTRIBUTORS AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES. EACH PROVISION HEREOF WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OR WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH.
7. **INTELLECTUAL PROPERTY INDEMNITY.** Except as executed herein, Seller will defend any suit of proceeding brought against Buyer arising out of a claim that the design or construction of the Products sold or licensed hereunder by Seller infringes any patent, copyright or trademark granted or registered in the country of Seller's shipping destination, provided (a) Buyer promptly notified Seller in writing of any such claim and any suit or proceeding, (b) at Seller's expense, Buyer gives Seller the sole right to defend, settle and control the defense of the suit or proceeding, (c) Buyer provides all necessary information and assistance for such defense or settlement, and (d) Buyer takes no position adverse to Seller in connection with such claim. In the event Seller is obligated to defend such suit or proceeding, Seller will pay all costs and damages finally awarded or agreed upon by Seller that are directly related thereto. Seller's obligations under this paragraph will be fulfilled if Seller, at its option and expense: (i) procures for Buyer the right to continue using such Products, (ii) replaces the same with non-infringing equipment having functionality similar to that of the Products, (iii) modifies the Products to make them non-infringing while retaining similar functionality, or (iv) if (i)-(iii) are not commercially practicable, refunds to Buyer the purchase price of the affected Products in exchange for their return. Seller will have no obligation to defend or for any other liability with respect to: [a] any suit or proceeding to the extent based on or arising out of a configuration or modification made, specified or requested by Buyer and which is incorporated into or constitutes the Products, [b] the use of the Products in a process or application specified, requested or controlled by Buyer or any third parties, or [c] the use of the Products in combination with other equipment or materials not supplied by Seller. As used in this paragraph, the term "Products" shall mean only Seller's standard hardware that are generally commercially available, and expressly excludes third-party-branded equipment. THE PARAGRAPH IS IN LIEU OF ALL WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, THAT THE PRODUCTS WILL BE FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PARTY BY WAY OR INFRINGEMENT OR THE LIKE.
8. **WEIGHTS AND DIMENSIONS.** Published or advertised weights and dimensions are estimates or approximations only and are not warranted.
9. **PRICES.** Prices and other information shown in any Seller publication (including product catalogs and brochures) are subject to change without notice and to confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. Prices do not include sales, use, excise, customs, value-added or similar taxes. Buyer will pay or reimburse Seller for all such taxes as may be applicable. Time and material services will be provided in accordance with Seller's published service rates (including applicable overtime and travel expenses) in effect as of the date such services are provided, unless otherwise confirmed by Seller's written quotation or order acknowledgment. Billable service time includes travel time to and from the job site and all time Seller's representatives are available for work and waiting (whether on or off the job site) to perform the services.
10. **CHANGES AND SUBSTITUTIONS.** Buyer-requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior approval and

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adjustments in price, scheduling and other affected terms and conditions. In any event, Seller reserves the right to reject any change that it deems unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with Seller's design or manufacturing capabilities. Seller further reserves the right to substitute using the latest superseding revision or series or equivalent Product having comparable form, fit and function.

11. **EXPEDITING REQUESTS.** Our normal lead times for LJ relays is 4-6 weeks. Requests for expedited LJ Relay orders can be accommodated for a fee. All expediting requests will be reviewed on a case by case basis.
12. **RETURNS.** All returns of Products will be pursuant to Seller's instructions. Non-warranty returns of unused and resalable Products for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return. Products returned under warranty must be properly packed and shipped to Seller specified location and shipped freight prepaid by Buyer.
13. **ORDER CANCELLATION.** Cancellation by Buyer prior to shipment is permitted only by written notice and upon payment to Seller of reasonable cancellation and restocking charges. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products. Seller has the right to cancel an order for cause at any time by written notice, and Seller will be entitled to cancellation and restocking charges as identified above.
14. **FORCE MAJEURE.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event of circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("***Force Majeure Event***"). *Force Majeure* Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered *Force Majeure* Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event prevents are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.
15. **GOVERNMENT CLAUSES AND CONTRACTS.** Application of government contract regulations and clauses to the Products or the agreement evidenced by these terms and conditions are subject to the separate review and consent by an authorized representative at Seller's headquarters. Products sold or licensed hereunder are not intended to be used, nor should they be used, in any nuclear-related application either as a "Basic Component" as defined under United States nuclear regulations or under similar nuclear laws and regulations of any other country or otherwise.
16. **GOVERNING LAW AND VENUE.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address for the Buyer on the Order, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state, provincial or territorial courts in the state, province or territory identified in the address for the Buyer on the Order and the courts of appeal from them.
17. **ASSIGNMENT.** The agreement evidenced hereby may not be assigned by either party without the written consent of the other (which consent will not be unreasonably withheld). However, consent will not be required for internal transfers and assignments as between Seller and its parent company, subsidiaries or affiliates as part of a consolidation, merger or any other form of corporate reorganization.
18. **SURVIVAL.** Provisions of this Order which by their nature should apply beyond any termination of this Order will remain in effect for the period expressed within this Section, but no longer than a period of two (2) years.
19. **SEVERABILITY.** If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.