

Stellar Technology

Title: Terms and Conditions of Sale

Except as specifically modified by the terms on the face of the applicable quote or order acknowledgement issued by Stellar Technology the following terms and conditions of sale (the "Terms and Conditions") shall control the sale of products and/or services (individually a "Product" and collectively the "Products") from Stellar Technology to the buyer of such Products (the "Buyer"):	
1.	GOVERNING TERMS AND CONDITIONS: If these Terms and Conditions are included with and/or referenced by a quote provided by Stellar Technology, the offer represented by the quote may be accepted by Buyer only by consent to these Terms and Conditions. If these Terms and Conditions are included with and/or referenced by an order acknowledgement, Stellar Technology's acceptance of Buyers' purchase order is conditional upon Buyer's assent to these Terms and Conditions. In either case, the terms and conditions of Buyer's purchase order (the "Purchase Order") shall be of no force or effect except with respect to the type and quantity of the Products, the prices of the Products (to the extent they match the prices on Stellar Technology's quote and/or order acknowledgement) and the delivery method and schedule for the Products (to the extent such delivery schedule is consistent with Stellar Technology's lead times for the Products).
2.	DELIVERY: Unless otherwise stated, all shipments shall be FCA-Stellar Technology's plant per Incoterms 2010 with standard commercial packaging. The cost of any special packaging shall be borne by Buyer. In each of its Purchase Orders, Buyer shall set forth the method of shipment preferred. In the absence of such information, Seller will use its reasonable judgment as to an appropriate method of shipment. All Parcel Post shipments will be insured at Buyer's expense unless otherwise specified. Each Purchase Order submitted by Buyer for the Products is accepted by Stellar Technology on the basis that time is not of the essence. Stellar Technology shall not be liable for any delays in delivering the Products caused by any of the following: (a) a Force Majeure event under Section 18; (b) priorities granted at the request or the benefit, directly or indirectly, of any governmental authority; (c) any changes in the Products or the delivery schedule or method of shipment; (d) the number of units of the Products ordered by Buyer exceeds the forecasted amount, if any, by five percent (5%) or more; or (e) any other cause beyond the reasonable control of Stellar Technology.
3.	INSPECTION AND ACCEPTANCE: The Products delivered by Stellar Technology to Buyer under this Agreement shall be deemed finally inspected and accepted within thirty (30) days after their receipt by Buyer unless notice of rejection or notice of any claim is given in writing to Stellar Technology within such time. Acceptance shall constitute acknowledgment of full performance by Stellar Technology of all its obligations under this Agreement with respect to the Products accepted except for any warranty obligations set forth below.
4.	PRICE: The Product prices set forth on the face of the Stellar Technology quote or order acknowledgement to which these Terms and Conditions are attached exclude all applicable taxes, fees and duties unless otherwise provided. Stellar Technology reserves the right to increase the prices for the Products at any time and for any reason, including, without limitation, as a result of an increase in the price of materials, including, without limitation, metals and chemicals, used to manufacture the Products.
5.	PAYMENT, TAXES AND OTHER CHARGES: Payment for the Products shall be due within thirty (30) days from the date of Stellar Technology's invoice. Any tax or other government fee or charge upon the production, sale, use import/export and/or shipment of the Products, including, without limitation, taxes, fees or charges on the raw materials used to produce the Products, now imposed or hereafter becoming effective, shall be added to the price of the Products and shall be paid by Buyer. Past due amounts shall be subject to interest charges in the amount of one and one-half percent (1 ½%) per month or the maximum amount allowed by law, whichever is less.
6.	INTELLECTUAL PROPERTY: Unless otherwise specifically agreed to in writing by Stellar Technology, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property (i) now owned by Stellar Technology, (ii) created hereafter by Stellar Technology outside the scope of the Purchase Order or the agreement under which a Purchase Order is submitted (the "Agreement") or (iii) created by Stellar Technology or created jointly by Stellar Technology and Buyer in connection with the Purchase Order or Agreement (collectively, "Stellar Technology's Intellectual Property") shall be and remain Stellar Technology's property. Stellar Technology grants no license or other right to Buyer in Stellar Technology's Intellectual Property, whether now owned or hereafter created. Unless otherwise specifically agreed to in writing by Buyer, all drawings, techniques, processes, inventions, patents, patent applications and other intellectual property owned by Buyer on the effective date of the Purchase Order ("Buyer's Intellectual Property") shall be and remain the property of Buyer.

Stellar Technology

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7.	PATENT INFRINGEMENT: Buyer agrees to indemnify and hold Stellar Technology harmless from and against any and all cost, damage, liability, or expense resulting from claims or demands by a third party based on alleged infringement of any intellectual property of such third party in the event Stellar Technology uses Buyer's Intellectual Property or Stellar Technology is otherwise directed by Buyer in the fulfillment of Stellar Technology's obligations under the Purchase Order, Agreement and/or these Terms and Conditions. Stellar Technology agrees to indemnify and hold Buyer harmless from and against any and all cost, damage, liability, or expense resulting from claims or demands by a third party that Stellar Technology's Intellectual Property infringes upon the intellectual property of such third party; provided, however, that in addition to the limitation of liability set forth in Section 12 of these Terms and Conditions, Stellar Technology's liability for the indemnification obligation under this Section 7 shall be limited to the amount Buyer paid to Stellar Technology for the Products subject to the infringement claim.
8.	SOFTWARE: If a Product sold to Buyer contains Software (as defined below), Stellar Technology retains all ownership rights in such Software. Stellar Technology grants to Buyer a nonexclusive license to use the Software solely in connection with the use of the Product. Such license is assignable by Buyer to the end user of the Product if the Product is incorporated into a product sold by Buyer to such end user. Buyer and Buyer's end user are prohibited from (i) copying, in whole or in part, the Software; (ii) modifying the Software; (iii) reverse compiling or reverse assembling all or any portion of the Software; (iv) renting, leasing, distributing or selling the Software separate from the end product incorporating the Product containing the Software; or (v) creating derivative works of the Software. "Software" shall mean programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated or recompiled.
9.	TOOLING: Unless otherwise specifically agreed to in writing by Stellar Technology, any and all tooling, equipment, dies and fixtures (collectively, the "Tooling") acquired and/or used by Stellar Technology in manufacturing the Products shall be and remain the property of Stellar Technology, and Buyer's payment of tooling charges shall not be construed to grant, convey, or transfer to Buyer any ownership rights in or to the Tooling to which such tooling charge applies. All Tooling either furnished by or the ownership of which has been specifically transferred to Buyer in writing ("Buyer's Tooling") shall be and remain the property of Buyer. Such Buyer's Tooling shall be used by Stellar Technology only in performing Stellar Technology's obligations under the Purchase Order, Agreement and/or these Terms and Conditions and shall be subject to removal by Buyer upon reasonable notice to Stellar Technology. During the time Buyer's Tooling is in Stellar Technology's possession, Stellar Technology shall be responsible for routine maintenance of Buyer's Tooling. Cost of major reconditioning or replacement of Buyer's Tooling shall be the responsibility of Buyer. If a period of three (3) years elapses since the last order of Products from Buyer requiring the use of Buyer's Tooling, and Buyer has not requested Stellar Technology to return Buyer's Tooling, Stellar Technology may dispose of Buyer's Tooling without further obligation or liability to Buyer and may charge Buyer for any costs associated with such disposal.
10.	WARRANTY AND DISCLAIMER OF WARRANTIES: Stellar Technology warrants that the Products will be free from any defects in workmanship or material. Such warranty shall extend for a period of one (1) year from the date of shipment of the Product by Stellar Technology to Buyer (the "Warranty Period"). In the event a defect in workmanship or material in Product sold develops within the Warranty Period as a result of normal, proper and intended use of the Product, Stellar Technology agrees to repair or replace, at Stellar Technology's option, the defective Product(s) provided that Buyer gives Stellar Technology written notice of any such defect, which such notice is received by Stellar Technology within the Warranty Period and which describes the defect. The defective Product(s) shall be delivered to Stellar Technology, FCA-Stellar Technology's facility per Incoterms 2010, at the sole cost and expense of Buyer. Notwithstanding the forgoing, the defective Product(s) shall not be returned to Stellar Technology without the issuance by Stellar Technology of a Return Material Authorization. Stellar Technology's obligation for lot traceability of a shipped Product is limited to the tracking of the original packaging in which the Product was shipped, unless customized marking of the Product with unique lot identification is required by Buyer and agreed to by Stellar Technology, as evidenced by the inclusion of such marking on the approved Buyer's drawing or approved Buyer's technical specification for the Product. Once the Product is removed from its original packaging, it is Buyer's obligation to track the Product and maintain lot traceability for purposes of evidencing the date of shipment to support a warranty claim. REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT(S) IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER WITH RESPECT TO ANY DEFECTIVE PRODUCT(S), AND Stellar Technology's LIABILITY UNDER THIS SECTION IS SUBJECT TO SECTION 12 OF THESE TERMS AND CONDITIONS. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 10, Stellar Technology DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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Title: Terms and Conditions of Sale

11.	<p>DEFAULT AND TERMINATION: In the event either party defaults with respect to any provision of these Terms and Conditions, or files or has filed against it a petition for bankruptcy, or suffers the appointment of a receiver or trustee of its business or properties by reason of insolvency or liquidation (each an “Event of Default”), the non-defaulting party shall have the right to terminate the Purchase Order, Agreement and/or these Terms and Conditions if such Event of Default is not cured by the defaulting party within thirty (30) days after receipt of written notice of such Event of Default from the non-defaulting party except in the event of a failure to pay any amount when due hereunder, in which case such Event of Default shall be cured within ten (10) days of such notification. Upon termination, the non-defaulting party shall be entitled to seek any and all legal or equitable remedies available to such party under this Agreement or under applicable law. In addition, in the event Stellar Technology terminates the Purchase Order, Agreement and/or these Terms and Conditions as a result of an uncured Event of Default by Buyer, Buyer shall be liable to Stellar Technology for the following: (i) the purchase price of all finished Products delivered to Buyer but not yet paid for at the time of termination, including any interest on overdue payments, if any; (ii) the purchase price of all finished Products not yet delivered to Buyer at the time of termination (excluding those units of Products included in the calculation of inventory in item (iii)); (iii) the purchase price of all inventory of the Products held by Stellar Technology for Buyer at the time of termination; (iv) the value of all work in progress at the time of termination; and (v) the cost of all raw materials acquired by Stellar Technology for use in production of the Products held by Stellar Technology or on order by Stellar Technology at the time of termination (collectively, the “Costs”). Buyer shall pay the Costs to Stellar Technology within thirty (30) days of termination by Stellar Technology. Subject to Section 12, the right of either party to terminate is in addition to, and not in lieu of, any and all legal and equitable remedies available to the non-defaulting party in the event of an Event of Default by the other party.</p>
12.	<p>LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF Stellar Technology ARISING OUT OF THE SALE OF PRODUCTS BY Stellar Technology TO BUYER UNDER ANY PURCHASE ORDER EXCEED THE AMOUNT PAID BY BUYER TO Stellar Technology FOR THE PRODUCTS UNDER SUCH PURCHASE ORDER. Stellar Technology SHALL HAVE NO LIABILITY FOR ANY DAMAGE ARISING FROM BUYER’S (i) USE OF A PRODUCT IN A MANNER FOR WHICH IT WAS NOT INTENDED OR (ii) INCORPORATION OF A PRODUCT INTO AN END PRODUCT FOR WHICH IT WAS NOT DESIGNED OR AUTHORIZED FOR USE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE SALE OF PRODUCTS BY Stellar Technology TO BUYER.</p>
13.	<p>CONFIDENTIALITY: The Parties agree to keep confidential and, except as required by law, not disclose to any other third person any proprietary information (including, without limitation, all data, drawings, descriptions, design sheets, computer prints, computer codes, scientific and technological information, process specifications and procedures, including quality control instructions, production costs, production procedures, supplier information and any other technical and commercial information relevant to the Products (collectively, the “Confidential Information”)) received from the other party in connection with these Terms and Conditions. Each party further agrees to use such Confidential Information only for the proper purposes necessary for performance of its obligations under any Purchase Order, Agreement and/or these Terms and Conditions. To the extent disclosure is required by law, the disclosing party shall provide prior notice of such impending disclosure to the other party and the disclosing party shall use reasonable efforts at its own cost and expense to limit such disclosure and to maintain the confidentiality of such Confidential Information to the extent permitted by law. In the event the Parties have entered into a separate Confidentiality or Non-Disclosure Agreement governing the transactions to which these Terms and Conditions apply, the terms of such Agreement shall take precedence over this Section 13.</p>
14.	<p>EXPORTS: The Parties agree to comply with all applicable U.S. export control laws and regulations, including, without limitation, (i) the Arms Export Control Act (22 U.S.C. 2751-2794), including the International Traffic in Arms Regulation (ITAR) (22 C.F.R. 120 et seq.) and (ii) the Export Administration Act (50 U.S.C. app. 2401-2420), including the Export Administration Regulations, 15 C.F.R. 730-774 and agree to obtain any export license or agreement, if required by any U.S. export laws or regulations. The Products are licensed by the United States for the destination identified as the ship to destination. Any diversion contrary to the law of the United States is prohibited.</p>
15.	<p>AUDITS: Stellar Technology does not consent to any audit of its books or records by Buyer in connection with the sale of Products to Buyer except to the extent required by applicable law or by rule or regulation of a Federal department or agency with proper jurisdiction.</p>
16.	<p>CHANGES: No change to any Purchase Order, including without limitation, any rescheduling of or delay in delivery of the Products, may be made by Buyer without the express written consent of Stellar Technology.</p>
17.	<p>SUBCONTRACTING: Stellar Technology may subcontract all or a portion of the manufacture of the Products sold hereunder without notice to or consent of the Buyer.</p>

Stellar Technology

Title: Terms and Conditions of Sale

18.	FORCE MAJEURE: Delay in or failure to carry out the duties imposed upon either Party under these Terms and Conditions shall not be deemed an Event of Default if such delay or failure results from causes beyond the reasonable control of the party claiming relief hereunder, including, without limitation, fire, explosion, labor disputes, casualty or accident, lack or failure of transportation facilities, epidemic, cyclone, flood, drought, declared or undeclared war, revolution, civil commotion, terrorism or acts of public enemies, blockage or embargo, or by reason of law, proclamation, ordinance, demand, or requirement of any governmental or ruling authority, including, without limitation, any denial by a governmental authority of appropriate export authorization.. A party may claim relief if such circumstances exist as to its subcontractor and the delay in performance of the subcontractor will cause or contribute to a delay in performance by the party. The party claiming relief under this provision shall notify the other of the circumstances giving rise to its application, provide an estimate of the impact on its performance, and take all reasonable steps to remove or mitigate the impediment.
19.	ASSIGNMENT: Buyer may not assign its rights or obligations hereunder without the express written consent of Stellar Technology, which consent shall not be unreasonably withheld or delayed. Stellar Technology may assign any or all of its rights or obligations hereunder without the express written consent of Buyer.
20.	GOVERNING LAW: These Terms and Conditions shall be governed by, construed under and enforced in accordance with the laws of the State of New York without regard to its choice of law principles. The parties agree that the provisions of the United Nations Convention on Contracts for International Sale of Goods shall not apply to any transaction covered by these Terms and Conditions.
21.	DISPUTE RESOLUTION: The parties shall attempt, in good faith, to resolve any controversy, claim, or dispute arising out of these Terms and Conditions through negotiations. In the event that negotiations are unsuccessful, the controversy, claim, or dispute shall, upon written demand of either Party, be resolved through binding arbitration. Such arbitration shall take place in Buffalo, New York and shall proceed in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the laws of New York. The decision shall be enforceable by any court of competent jurisdiction. All costs of such arbitration, except expert fees and attorneys' fees, shall be shared equally by the parties. This Section shall not be construed to limit a party's right to obtain equitable or other relief that is not available through arbitration.
22.	COMPLIANCE WITH LAWS: Each party agrees to be responsible for complying with all applicable laws, rules, regulations, judgments, decrees, orders and permits in performing its obligations under these Terms and Conditions.
23.	MISCELLANEOUS: Unless Buyer is an authorized distributor of Stellar Technology, Buyer may not resell the Products to any third parties without the prior express written consent of Stellar Technology; provided, however, Buyer is not prohibited from incorporating the Products into items produced by Buyer and selling such items to third parties. Buyer may not set-off any amount owed to it by Stellar Technology, regardless of the nature of any such claim, in lieu of fully satisfying Stellar Technology's invoice for the sale of Products to Buyer hereunder. No failure on the part of either party to exercise any right or remedy hereunder shall impair, prejudice or constitute a waiver of any such right or remedy. No waiver by a party of an Event of Default by the other party shall be deemed to constitute a waiver of a future Event of Default, whether similar or dissimilar in nature. Any provisions of these Terms and Conditions that, by their nature, are intended to survive the expiration or termination of these Terms and Conditions, including, without limitation, Sections 5 through 13 (for purposes of Section 10, the obligations of Stellar Technology shall survive only to the extent of the balance of any Warranty Period existing at the time of such expiration or termination), 20 and 21, shall survive such expiration or termination for any reason. If any provision or part of any provision of these Terms and Conditions shall be invalid or unenforceable under applicable law, such provision or part of such provision shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of said provision or the remaining provisions of these Terms and Conditions. These Terms and Conditions, along with the terms on the face of the document to which they are attached and any other supplemental terms agreed upon in a writing executed by both parties' authorized representatives, constitute the entire agreement between the parties, and Stellar Technology shall not be bound by any agent's or employee's representation, promise or inducement not set forth herein.