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## SALES ORDER TERMS & CONDITIONS

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### **1. Agreement and Acceptance.**

This is an offer to sell, or a contract of sale for, as the case may be, the goods described in the body of this Sales Order (the "Goods"), for the price indicated in the body of this Sales Order, between Benchmark Connector Corp ("Seller") and the purchaser identified in the body of this Sales Order ("Purchaser"). Any acceptance of the delivery of the Goods, or any acceptance or confirmation of this Sales Order, expressed or implied, shall constitute acceptance of the terms and conditions in the body of this Sales Order and those outlined in Benchmark Connector Corp – Sales Order Terms and Conditions – Items 1 through 22. This Sales Order constitutes the entire agreement between the parties with respect to the Goods, and supersedes all previous offers and agreements, whether oral or written, including any request for quotations, quotation, or purchase order. No addition to, or other modification of, this Sales Order shall be binding on Seller unless it is in writing and executed by a duly authorized representative of Seller. In the event of a conflict between any of the terms contained in this Sales Order and those contained in Benchmark Connector Corp – Sales Order Terms and Conditions – items 1 through 22, the terms in the body of this Sales Order shall control.

### **2. Payment Terms.**

Unless otherwise specified on the face of this Sales Order, Seller's *strict* payment terms are net thirty (30) days. Any amounts owed by Purchaser to Seller and not paid when due shall bear interest at the rate of one and one half percent (1½%) per month from the original due date until paid. Purchaser shall also be liable to Seller for Seller's reasonable costs of collection incurred in collecting any amounts owed by Purchaser under this Sales Order, including reasonable attorneys' fees.

### **3. Open Order Pricing.**

If Purchaser is buying the Goods pursuant to an open order with Seller, Purchaser understands and agrees that the cost of the Goods is subject to change upon written notice of seven (7) days.

### **4. Taxes, Duties and Tariffs.**

Unless otherwise specified on the face of this Sales Order, Purchaser shall bear the cost of all applicable federal, state, and local taxes, duties and tariffs incurred in connection with the sale of the Goods.

### **5. Inspection and Approval.**

The Goods shall be deemed accepted by Purchaser upon physical receipt of Goods unless Purchaser provides Seller with written notice of its rejection of all or part of the Goods, such notice specifying the defect underlying the rejection, within thirty (30) days after initial receipt of the Goods from the same lot.

### **6. Returns.**

All returns must be accompanied by a valid Return Material Authorization (RMA) issued by Seller. Seller shall have the sole discretion not to accept returns of non-defective Goods, and may impose a restocking fee of at least 25% as a condition to accepting a return of non-defective Goods. Any returned Goods must be in a new and unused condition and be shipped in their original containers.

### **7. Order Fulfillment.**

Should this Sales Order represent a partial fulfillment of a larger order, Purchaser must accept delivery of the remaining Goods within one (1) year after the initial receipt of goods by Seller unless otherwise specified on the face of this Sales Order.

### **8. Deliveries.**

Unless otherwise specified on the face of this Sales Order, deliveries may be made by Seller, in whole or in part, before the scheduled delivery date without penalty. Accelerated deliveries at the request of Purchaser may be subject to an additional expediting charge.



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### **9. Risk of Loss.**

Unless otherwise specified on the face of this Sales Order, all deliveries are F.O.B Seller or authorized shipper of Seller. Risk of damage to or loss of, the Goods shall pass to Purchaser upon tender to shipment carrier.

### **10. Security Interest.**

Until the purchase price and all other applicable costs and expenses are paid in full, Seller reserves a purchase money security interest in the Goods and the proceeds there from, and Seller thereby possesses the rights of a secured party under the Uniform Commercial Code. Upon Seller's request, Purchaser agrees to execute all necessary financing statements and other documents evidencing this security interest with the appropriate state and local authorities. Seller is entitled to reasonable access to purchaser's place of business as necessary to exercise its remedies as a secured party.

### **11. Limited Warranty.**

Unless otherwise specified on the face of this Sales Order, Seller warrants that the Goods at time of shipment are: (a) new and unused; (b) free and clear of all liens and encumbrances; (c) in material conformance with all specifications, drawings, or descriptions furnished to Seller by Purchaser and accepted by Seller; and (d) of merchantable quality. Seller's obligation under this warranty is limited to the replacement of the product or parts thereof which the Seller reasonably determines do not conform to these warranties. Any action for a breach of this limited warranty must be commenced within one (1) year from the date when the breach was, or should have been, discovered.

### **12. Selection/Design of Goods.**

The selection of the Goods ordered, or design of any custom Goods, shall be Purchaser's sole and ultimate responsibility, and Seller shall have no liability whatsoever for any design defects of Goods selected by Purchaser or of custom Goods, or in the event the Goods ordered are unsuitable for Purchaser's intended use. Any advice or assistance provided by Seller to Purchaser in connection with Purchaser's selection or design of the Goods is at Purchaser's risk, and Seller makes no representation or warranty whatsoever in connection with such advice or assistance.

### **13. Limitation of Liability.**

Seller shall not be responsible for any misuse, neglect, accident, reconfiguration, or alteration of the Goods by Purchaser or others, or improper installation or use in violation of instructions furnished by Seller. Seller's liability for any claims or damages relating to the Goods shall be limited to the purchase price of the Goods, and in no event shall Seller be liable for any consequential, special, or incidental damages, loss, or expenses, or personal injury, directly or indirectly arising from use of Seller's products separately or in combination with any other equipment or material.

### **14. Goods Solely for Commercial Purposes.**

Purchaser represents and warrants that the Goods are being purchased, and will be used by it, solely for commercial, business, or government purposes, and not for personal, family, or household purposes.

### **15. Indemnification.**

Purchaser shall indemnify, hold harmless, and defend Seller, and its directors, officers, employees, agents, and affiliates from and against any and all costs, claims, suits, liabilities, damages, and expenses of any kind whatsoever (including, but not limited to, court costs and reasonable attorneys' fees), incurred or suffered as a result of Purchaser's late payment or nonpayment (including the costs of collection), misuse or alteration of the Goods, or design of Goods selected by Purchaser or of custom Goods.

### **16. Cancellation.**

Seller may cancel any outstanding portion of this Sales Order without penalty in the event Purchaser fails to comply with any of the terms and conditions of this Sales Order. Seller may also cancel any outstanding portion of this Sales Order in the event Purchaser becomes insolvent, is subject to a bankruptcy proceeding, makes an assignment for the benefit of creditors, or ceases or suspends its normal business operations. Any cancellation by Seller shall be without prejudice to any other rights which Seller may have against Purchaser



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under this Sales Order other wise. Purchaser may not cancel this Sales Order or any portion thereof without written approval from the Seller. Purchaser will be responsible for any and all costs incurred by Seller as a result of any cancellation (including, but not limited to the cost of Goods purchased or produced to fulfill this Sales Order which cannot be immediately sold for the same or higher price or returned to Seller's supplier for full refund).

### **17. Cross-Defaults.**

Any material breach by Purchaser under any other order, purchase order, quotation or other agreement existing between Seller and Purchaser pending this Sales Order (including, but not limited to, the non-payment of any amounts owed to Seller by Purchaser), shall constitute a breach of this Sales Order by Purchaser and give Seller the right to terminate this Sales Order and demand immediate payment of any outstanding amounts owed to it in addition to any other right or remedy Seller might have at law or in equity. Similarly, any material breach by Purchaser under this Sales Order (including, but not limited to, the non-payment of any amounts owed to Seller by Purchaser), shall constitute a breach of any other order, purchase order, quotation or other agreement existing between Seller and Purchaser during the pendency of this Sales Order and give Seller the right to terminate such other agreement and demand immediate payment of any outstanding amounts owed to it in addition to any other right or remedy Seller might have at law or in equity.

### **18. Force Majeure.**

Seller shall not be responsible for delays in producing, procuring, or delivering the Goods caused by: acts of God, fires, war, terrorism, riot or insurrection, strikes or differences with or among workmen, government interference, inability to secure transportation, weather conditions, timing of deliveries from Seller's vendors or suppliers, or other contingencies beyond Seller's control. Should any of the foregoing conditions continue for a period of thirty (30) days after its first occurrence, Seller may cancel this Sales Order without incurring any liability to Purchaser.

### **19. Assignment.**

Purchaser shall not assign any of its rights, or delegate any of its duties, under this Sales Order without the prior written consent of Seller, and any attempt to do so shall be void.

### **20. Remedies and Waiver.**

All rights and remedies of Seller under this Sales Order shall be cumulative and in addition to any other rights and remedies available to Seller under any other valid agreement with Purchaser or any applicable law. No waiver or any breach of the provisions of this Sales Order shall be deemed a waiver of any other provision of this Sales Order or of any other Sales Order or further breach of this Sales Order or of any other Sales Order.

### **21. Severability.**

If any provision of this Sales Order shall be found invalid, illegal, or unenforceable to any extent, the remainder of this Sales Order and its application shall not be affected, and shall remain enforceable to the fullest extent permitted by law.

### **22. Governing Law and Venue.**

This Sales Order shall be construed in accordance with, and governed by, the internal laws of the State of Florida, without regard to that state's choice of law principles. Any action brought in connection with this Sales Order or the Goods shall be brought only in the federal or state courts located in Broward County (Florida). Purchaser irrevocably submits to the personal jurisdiction of such courts, and waives any objection it may have concerning the venue or convenience of such forums.

### **23. MILI/CCLI/ITAR.(Export Control)**

All items received from BENCHMARK CONNECTOR CORPORATION are possibly export controlled from the United States by the International Traffic in Arms Regulations (ITAR) and may be listed under the United States Munitions List Items (MLI)(see 22CFR121). These lists require registration of manufacturers and exporters with the U.S. Department of state, Directorate of Defense Trade Controls (DDTC) prior to any export from the U.S. (See 22CFR122). Items from the above lists, shipped from the United States must comply with the requirements specified under U.S. regulations and will be the responsibility of the PURCHASER to obtain all the necessary Authorizations, Licenses or Approvals.



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