

TERMS AND CONDITIONS OF SALE

Customer and Strategic Test Corporation ("STC") agree that the purchase and sales of STC hardware and software products (the "Products") are made under these terms and conditions, and that STC SHALL NOT BE BOUND BY CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS. The order acknowledgement described on the reverse side hereof is incorporated herein and is binding on Customer and shall constitute the entire agreement (the "Contract") between Customer and STC, whether or not this Contract is signed by Customer, when Customer has accepted delivery of any of the Products subject hereto. This Contract is intended by the parties as a final, complete and exclusive expression of their agreement with respect to, and statement of, the terms of the sale of the Products subject hereto, and supersede any order or confirmation of Customer, whenever delivered, and govern the sales transaction described on the reverse side hereof in all respects.

1. **TITLE.** Subject to STC's right to stoppage in transit, delivery of merchandise to a carrier under a commercial bill of lading shall constitute delivery to Customer, and risk of loss shall thereupon pass to Customer. STC reserves, and Customer hereby grants to STC, a security interest under the Uniform Commercial Code in all merchandise purchased under this Contract until paid in full. If Customer does not make payments as agreed, the security interest allows STC to repossess the merchandise. Customer is responsible to STC for any loss or damage to the merchandise until the purchase price is paid in full.
2. **TAXES.** Product prices are exclusive of, and Customer shall pay, applicable sales, use, service, value added or like taxes, unless Customer has provided STC with an appropriate exemption certificate for the delivery destination acceptable to the applicable taxing authorities.
3. **PRICES AND PAYMENT.** All quotations shall expire thirty (30) days from date of issuance, unless otherwise set forth on the quotation or agreed in writing. Customer shall make payment in full prior to or upon delivery by cashier's check, credit card, or money order, unless STC approves Customer for credit terms. If STC approves Customer's credit application, payment shall be due no later than 30 days from the date of STC's invoices. All sums not paid when due shall accrue interest daily at the lesser of a monthly rate of 1.5% or the highest rate permissible by law on the unpaid balance until paid in full. Payments for orders accepted shall be made in U.S. Dollars. In the event of any order for several units, each unit(s) will be invoiced when shipped. Exceptions will be made for government purchase orders. STC reserves the right to change prices without notice at any time prior to order confirmation.
4. **ORDERS.** All orders are subject to acceptance by STC. The order described on the reverse side hereof may not be cancelled or changed without the express written consent of STC, regardless of whether such Products are in the process of manufacture. An order is not binding on STC until Customer has received STC's formal order acknowledgement (which may be in the form of an invoice). Customer's use or receipt of the Products, any payment by Customer for the Products or Customer's submission of an order form shall constitute Customer's acceptance of these Terms and Conditions of Sale.
5. **DELIVERY.** STC shall deliver the products to a carrier at STC's plant and, if the Products are sold to a Customer outside the United States, shall clear the Products for export destined outside the United States. The acceptance of shipment by a common carrier in accordance with Customer's shipping instructions shall constitute a delivery. Customer shall pay all freight charges, applicable import duties, and other necessary fees and shall bear the risks of carrying out customs formalities and clearance. Orders are entered as close as possible to the Customer's requested shipment date, if any. Shipment dates are scheduled after acceptance of orders and receipt of necessary documents. Claims for shipment shortage shall be deemed waived unless presented to STC in writing within thirty (30) days of shipment. Unless specifically notified to the contrary by the Customer in writing within ten (10) days of delivery, customer acceptance of the Product(s) will be deemed to have been given. Customer's acceptance of any Products shall constitute a waiver of any claim for late delivery.
6. **LIMITED WARRANTY.** STC hardware Products are warranted against defects in materials and workmanship for a limited period of time from the date STC ships the Products to Customer ("Delivery Date") as follows: UltraFast hardware Products (two (2) years); TRITON hardware products (two (2) years); and cables (ninety (90) days). All software Products are licensed to Customer under the terms of the appropriate Strategic Test Corporation license. For a period of ninety (90) days from the Delivery Date, STC software Products (when properly installed on STC hardware Products) (a) will perform substantially in accordance with the accompanying written materials, and (b) the medium on which the software product is recorded will be free from defects in materials and workmanship under normal use and service. Any replacement of a licensed software product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Customer must obtain a Goods Return Authorization number from STC before returning any Products under warranty to STC. Customer shall pay expenses for shipment of repaired or replacement Products to and from STC. After examining and testing a returned product, if STC concludes that a returned product is not defective, Customer will be notified, the product returned at Customer's expense, and a charge made for examination and testing. This Limited Warranty is void if failure of the Products has resulted from accident, abuse, misapplication, improper calibration by Customer, Customer supplied third party software not intended for use with the applicable STC software, utilization of an improper hardware or software key or unauthorized maintenance or repair.
7. **CUSTOMER REMEDIES.** STC's sole obligation (and Customer's sole remedy) with respect to the foregoing Limited Warranty shall be to, at STC's option, return the fees paid or repair/replace any defective Products, provided that STC receives written notice of such defects during the applicable warranty period. Customer may not bring an action to enforce its remedies under the foregoing Limited Warranty more than six (6) months after the accrual of such cause of action.
8. **RETURN/CANCELLATION/CHANGE POLICY.** Prior approval must be obtained from STC for any return by Customer of any Product. If STC in its sole discretion determines to approve a return, it will assign a Goods Return Authorization number and will record the reason for the return. If the Product has a manufacturing defect, STC, in its sole discretion, may issue a credit for the returned Product or repair or replace with like Product. Customer shall pay a fifteen percent (15%) restocking charge on any unwanted TRITON Development Kit products returned to STC. STC does not accept unwanted product returns for TRITON modules or UltraFast products. STC shall not be responsible for packing, inspection or labor costs in connection with any return of any Product, nor shall STC be responsible for the return of any Product without authorization. STC may terminate any order if any representations made by Customer to STC are false or misleading. Changes to orders shall not be binding upon nor be put into effect by STC unless confirmed in writing by STC's appropriate representative.

9. NO OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, ARE MADE WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OR ANY OTHER WARRANTIES THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING. STC DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULTS OF THE USE OF THE PRODUCTS IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE AND DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE. STC EXPRESSLY DISCLAIMS ANY WARRANTIES NOT STATED HEREIN.

10. LIMITATION OF LIABILITY; NO LIABILITY FOR CONSEQUENTIAL DAMAGES. The entire liability of STC and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) is set forth above. To the maximum extent permitted by applicable law, in no event shall STC and its licensors, distributors, and suppliers (including its and their directors, officers, employees, and agents) be liable for any damages, including, but not limited to, any special, direct, indirect, incidental, exemplary, or consequential damages, expenses, lost profits, lost savings, business interruption, lost business information, or any other damages arising out of the use or inability to use the Products, even if STC or its licensors, distributors, and suppliers has been advised of the possibility of such damages. Customer acknowledges that the applicable purchase price or license fee for the Products reflects this allocation of risk. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply. If the foregoing limitation of liability is not enforceable because an STC product sold or licensed to Customer is determined by a court of competent jurisdiction in a final, non-appealable judgment to be defective and to have directly caused bodily injury, death, or property damage, in no event shall STC's liability for property damage exceed the greater of \$50,000 or fees paid for the specific product that caused such damage.

11. WARNING: (1) STC PRODUCTS ARE NOT DESIGNED WITH COMPONENTS AND TESTING FOR A LEVEL OF RELIABILITY SUITABLE FOR USE IN OR IN CONNECTION WITH SURGICAL IMPLANTS OR AS CRITICAL COMPONENTS IN ANY LIFE SUPPORT SYSTEMS WHOSE FAILURE TO PERFORM CAN REASONABLY BE EXPECTED TO CAUSE SIGNIFICANT INJURY TO A HUMAN. (2) IN ANY APPLICATION, INCLUDING THE ABOVE, RELIABILITY OF OPERATION OF THE SOFTWARE PRODUCTS CAN BE IMPAIRED BY ADVERSE FACTORS, INCLUDING BUT NOT LIMITED TO FLUCTUATIONS IN ELECTRICAL POWER SUPPLY, COMPUTER HARDWARE MALFUNCTIONS, COMPUTER OPERATING SYSTEM SOFTWARE FITNESS, FITNESS OF COMPILERS AND DEVELOPMENT SOFTWARE USED TO DEVELOP AN APPLICATION, INSTALLATION ERRORS, SOFTWARE AND HARDWARE COMPATIBILITY PROBLEMS, MALFUNCTIONS OR FAILURES OF ELECTRONIC MONITORING OR CONTROL DEVICES, TRANSIENT FAILURES OF ELECTRONIC SYSTEMS (HARDWARE AND/OR SOFTWARE), UNANTICIPATED USES OR MISUSES, OR ERRORS ON THE PART OF THE USER OR APPLICATIONS DESIGNER (ADVERSE FACTORS SUCH AS THESE ARE HEREAFTER COLLECTIVELY TERMED "SYSTEM FAILURES"). ANY APPLICATION WHERE A SYSTEM FAILURE WOULD CREATE A RISK OF HARM TO PROPERTY OR PERSONS (INCLUDING THE RISK OF BODILY INJURY AND

DEATH) SHOULD NOT BE RELIANT SOLELY UPON ONE FORM OF ELECTRONIC SYSTEM DUE TO THE RISK OF SYSTEM FAILURE. TO AVOID DAMAGE, INJURY, OR DEATH, THE USER OR APPLICATION DESIGNER MUST TAKE REASONABLY PRUDENT STEPS TO PROTECT AGAINST SYSTEM FAILURES, INCLUDING BUT NOT LIMITED TO BACK-UP OR SHUT DOWN MECHANISMS. BECAUSE EACH END-USER SYSTEM IS CUSTOMIZED AND DIFFERS FROM STC'S TESTING PLATFORMS AND BECAUSE A USER OR APPLICATION DESIGNER MAY USE STC PRODUCTS IN COMBINATION WITH OTHER PRODUCTS IN A MANNER NOT EVALUATED OR CONTEMPLATED BY STC, THE USER OR APPLICATION DESIGNER IS ULTIMATELY RESPONSIBLE FOR VERIFYING AND VALIDATING THE SUITABILITY OF STC PRODUCTS WHENEVER STC PRODUCTS ARE INCORPORATED IN A SYSTEM OR APPLICATION, INCLUDING, WITHOUT LIMITATION, THE APPROPRIATE DESIGN, PROCESS AND SAFETY LEVEL OF SUCH SYSTEM OR APPLICATION.

12. FORCE MAJEURE. STC shall be excused for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of governments, natural catastrophes, acts of Customer, interruptions of transportation or inability to obtain necessary labor or materials. STC's estimated shipping schedule shall be extended by a period of time equal to the time lost because of any excusable delay. In the event STC is unable to perform in whole or in part because of any excusable failure to perform, STC may cancel orders without liability to Customer.

13. LIMITED INDEMNITY AGAINST INFRINGEMENT. STC shall, at its own expense, defend any litigation resulting from sales of the Products to the extent that such litigation alleges that the Products or any part thereof infringes any United States patent, copyright, or trademark, provided that such claim does not arise from the use of the Products in combination with equipment or devices not made by STC or from modification of the Products, and further provided that Customer notifies STC immediately upon its obtaining notice of such impending claim and cooperates fully with STC in preparing a defense. If Customer provides to STC the authority, assistance, and information STC needs to defend or settle such claim, STC shall pay any final award of damages in such suit and any expense Customer incurs at STC's written request, but STC shall not be liable for a settlement made without its prior written consent. If the Products are held to be infringing and the use thereof is enjoined, STC may, at its option, either (i) procure for the Customer the right to use the Products, (ii) replace the Products with others which do not constitute infringement, or (iii) remove the infringing Products and refund the payment(s) made therefore by Customer. The foregoing states the Customer's sole remedy for, and STC's entire liability and responsibility for, infringement of any patent, trademark, or copyright relating to the Products provided hereunder. THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.

14. ACKNOWLEDGMENT/GOVERNING LAW. Customer acknowledges reading these Terms and Conditions of Sale, understands them and agrees to be bound by them. A waiver of any provision of this Contract in any one instance shall not be construed as a waiver or modification of any other term hereof or a waiver of such provision in any other instance. With respect to all orders accepted by STC, disputes arising in connection with these Terms and Conditions of Sale shall be governed by the laws of The Commonwealth of Massachusetts without regard to principles of conflicts of laws.

15. SEVERABILITY. The invalidity or unenforceability of any provision hereof under any present or future law, rule, regulation, or

ordinance will not affect any other provision hereof, and the remaining provisions hereof shall continue with the same force and effect as if such

invalid or unenforceable provision had not been inserted herein.