



## EADS DISTRIBUTION, LLC

### GENERAL TERMS AND CONDITIONS OF SALE

The term "BUYER" shall mean the company named on the accompanying Quotation, Order Acknowledgement or Invoice ("Sales Order"), which is purchasing the goods, materials or other equipment described in the Sales Order (the "Goods"). The term "SELLER" shall mean EADS DISTRIBUTION, LLC and its subsidiaries and affiliates. Collectively BUYER and SELLER are referred to as the "Parties" and individually as a "Party".

**1. Entire Agreement; Amendment:** These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the Goods by Seller to Buyer. The Sales Order and these Terms (collectively, the "Agreement") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party.

**2. Price:** Except as indicated on the Sales Order, prices are subject to change without notice and cover only the specified quantity. All changes in freight rates or transportation charges used by SELLER in computing prices and charges shown on the Sales Order occurring after the date of the Sales Order will be for the BUYER'S account. Any tax imposed on SELLER by any law or governmental entity on the sale or use of the Goods sold by SELLER shall be in addition to the sales price thereof.

**3. Terms of Payment:** Unless otherwise stated in the Sales Order, payment terms are net thirty (30) calendar days after the invoice date in U.S. Dollars. SELLER may assess a finance charge on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law.

**4. Delivery:** Delivery of Goods shall be F.O.B. Seller's facility (or *ex works*) unless otherwise expressly indicated in the Sales Order. UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF ANY DELAY IN DELIVERY OF GOODS. If delivery of any special items is delayed by BUYER for more than 30 days after completion, SELLER may invoice for such items and hold for BUYER'S disposition for a reasonable period of time. BUYER shall make payment for such special items within 30 days from date of invoice.

**5. Storage:** Any item or items of the Goods on this Sales Order for which manufacture and/or shipment is delayed by BUYER, or by causes within BUYER'S control, or by causes which affect BUYER'S ability to receive the Goods, may be placed in storage by SELLER for BUYER'S account and risk, and BUYER shall pay all charges for storage, shipping, and/or incidental expenses.

**6. Returns:** SELLER will not accept any Goods returned without SELLER'S prior written permission. All returned Goods must be in new and resalable condition, and shipped prepaid by BUYER. Collect shipments will not be accepted by SELLER.

**7. Title and Risk of Loss:** Unless otherwise stated in the Sales Order, title and risk of loss will pass to BUYER upon delivery of the Goods to the common carrier. BUYER'S exclusive remedy for shortage, loss or damage in transit shall be a claim against the carrier.

**8. Limited Warranty; Limitation of Liability:** SELLER warrants for a period of one (1) year from the shipment date that all Goods sold by it meet the specifications for such Goods and are free from defects of material and workmanship. SELLER agrees to repair or replace without charge, F.O.B. its facility, or at its option to allow credit for, any portion of the Goods which proves to be defective in material or workmanship within the warranty period stated above. THIS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES. THE TOTAL LIABILITY OF SELLER FOR ANY DAMAGES HEREUNDER SHALL BE LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE GOODS PURCHASED HEREBY.

Written notice of any claimed defect must be given to SELLER within thirty (30) days after such defect is or should have been discovered. Goods claimed to be defective must be held for SELLER'S shipping instructions. No claim for Goods alleged to be defective will be allowed until SELLER has had a reasonable opportunity to examine the Goods. SELLER'S obligation with respect to defective Goods is expressly limited to the repair or replacement of, or at its option, allowing credit for any such Goods, all as herein above provided.

This warranty does not extend to (a) any losses due to misuse, accident, abuse, neglect, normal wear and tear, or improper installation, maintenance or application; (b) products that have been repaired or altered outside of SELLER'S facility, unless authorized in writing by SELLER or unless such installation, repair or alteration is performed by SELLER; or (c) any labor charges for removal and/or replacement of the non-conforming or defective product or part thereof. This warranty extends to BUYER only and not to BUYER'S customers or users of BUYER'S products.

THE REMEDIES SET FORTH IN THIS SECTION 8 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8.

**9. Mutual Indemnities:** SELLER shall be liable for any illness, injury or death to SELLER'S employees, or for any loss or damage to SELLER'S property, in each case arising out of or relating to the provision of any Goods or services under this Sales Order and REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY BUYER'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, and SELLER shall indemnify, defend, and hold harmless BUYER, its parent, subsidiary and affiliated companies, and their officers, directors, employees and representatives, from and against any loss, claim, lawsuit, judgment, award or damage (including reasonable attorney's fees) on account of such illness, injury or death to SELLER'S employees, or loss or damage to SELLER'S property.

BUYER shall be liable for any illness, injury or death to BUYER'S employees, or for any loss or damage to BUYER'S property, in each case arising out of or relating to the provision of any Goods or services under this Sales Order and REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY SELLER'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, and BUYER shall defend, protect, indemnify and hold harmless SELLER, its parent, subsidiary and affiliated companies, and their officers, directors, employees and representatives from and against any loss, claim, lawsuit, judgment, award or damage (including reasonable attorney's fees) on account of such illness, injury or death to BUYER'S employees, or loss or damage to BUYER'S property.

**10. Arbitration:** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted by a single arbitrator and held in Houston, Texas.

**11. Choice of Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas excluding any conflicts of law principles which would apply the laws of any other jurisdiction. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the sale of any Goods under the Sales Order.

**12. Export Compliance:** BUYER shall be solely responsible for determining all export licensing requirements and for obtaining all necessary export licenses and authorizations required by applicable federal laws or regulations. Upon written request from BUYER, BUYER'S agent or freight forwarder, SELLER shall provide all necessary and sufficient technical information to assist BUYER, BUYER'S agent or freight forwarder in determining the export classification status of any of the Goods.

**13. Relationship of the Parties:** SELLER'S status under this Agreement shall be that of an independent contractor. The relationship of BUYER and SELLER shall in no event be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

**14. Termination or Modification:** In the absence of a breach of any of the terms of this Agreement, the Sales Order may not be canceled, terminated or modified by either Party, whether in whole or in part, except with the written consent of both Parties.

**15. Force Majeure:** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; and (i) shortage of adequate power or transportation facilities. The Impacted Party shall give notice as soon as practical of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

**16. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**17. Assignment:** BUYER shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of SELLER.

**18. Waiver:** No waiver by SELLER of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by SELLER. No failure by SELLER to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof.

**19. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.