

**General Sales Conditions  
of  
OMICRON electronics Corp. USA  
3550 Willowbend Blvd, Houston TX 77054  
(hereinafter referred to as "OMICRON")**

**1. General Provisions**

The following General Sales Conditions shall apply to all agreements, offers and deliveries entered into or made by OMICRON, and to any technical support services provided in respect to its products. To the extent such agreements, offers and deliveries relate to OMICRON providing testing services, training services or training meetings to or for a customer, OMICRON's Special Terms for Commissioning as well as Testing and Consulting Services USA and the Special Terms for Training Courses, Webinars and Conferences USA shall also apply to such services and meetings. No document containing terms which conflict with these General Sales Conditions, or which are otherwise inconsistent with these General Sales Conditions, shall be contractually binding on OMICRON unless such conflicting or inconsistent document is executed by an authorized representative of OMICRON.

**2. Offers**

No communication made on behalf of OMICRON shall constitute a binding offer or contract unless that communication is in writing and executed by an authorized representative of OMICRON. All prices are based on delivery FOB or CIP shipping point or origin, as specified in the applicable written quotation or other signed writing from OMICRON, and shall exclude any other costs or service charges, which excluded costs or charges shall include, without limitation, costs or charges for freight, packaging, brokerage fees, duties, taxes or insurance. Should any such costs, charges, taxes or other levies be incurred in connection with the delivery of any products or services, such costs, charges, taxes or other levies shall be borne by the customer.

**3. Delivery**

OMICRON shall use commercially reasonable efforts to meet any estimated or projected delivery date but no delivery date is guaranteed or warranted. Delivery shall be EXW (Houston) unless another shipping term has been designated by OMICRON in the applicable written quotation or other signed writing from OMICRON, and the shipment of products from and after such place and time of delivery shall be made at the expense and risk of the customer. OMICRON reserves the right to quote additional charges for any special routing, packing, labeling, handling or insurance requested by the customer.

**4. Security Interest**

To the extent permitted under applicable law, each customer purchasing a product from OMICRON hereby grants OMICRON a purchase money security interest in, and a purchase money lien encumbering, such product, and that customer hereby authorizes OMICRON to file a financing statement for such security interest.

**5. Warranty/ Damages**

5.1 OMICRON makes no product warranty except as provided below in this paragraph 5 or as required by the law of any pertinent jurisdiction. **TO THE EXTENT THE LIMITATION OF LIABILITY IS PERMISSIBLE BY THE LAW OF THE PERTINENT JURISDICTION, THE OVERALL LIABILITY OF OMICRON FOR ANY DAMAGES SHALL UNDER NO CIRCUMSTANCES EXCEED A TOTAL OF USD 3 MILLION (THREE MILLION US DOLLARS) PER EVENT CAUSING THE DAMAGE. THIS LIMITATION OF LIABILITY SHALL APPLY IRRESPECTIVE OF WHETHER OMICRON WAS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES AND EXTENDS TO ANY ACTUAL, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, ARISING OUT OF OR RELATED IN ANY WAY (I) TO OMICRON'S PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION TECHNICAL SUPPORT SERVICES PROVIDED IN RESPECT TO ITS PRODUCTS, OR (II) TO ANY AGREEMENTS, OFFERS OR DELIVERIES ENTERED INTO OR MADE BY OMICRON.** OMICRON shall not be liable for the acts or omissions of any third parties for any reason. OMICRON only warrants as follows:

(a) Under normal use and service of OMICRON's products, OMICRON warrants that: (i) any software which is part of the products will perform substantially in accordance with the accompanying product manual(s) for a period of 24 months from the date the customer receives such products (the "Receipt Date"); (ii) any hardware (other than hardware modules) which is part of the products will be free from defects in materials and workmanship under normal use and service for a period of 24 months from the Receipt Date; and (iii) any hardware modules which are part of the products will be free from defects in materials and workmanship under normal use and service for a period of one hundred eight-three (183) days from the Receipt Date.

(b) OMICRON's entire obligation under its warranty, and the customer's exclusive remedy shall be, at OMICRON's option, either (i) return of the price paid or (ii) repair or replacement of the products which do not meet the warranty contained in the immediately preceding paragraph 5.1(a), but only if such defective product and a copy of the invoice from the customer for such defective product are first returned to OMICRON.

**OMICRON DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED (BY STATUTE, TRADE USAGE OR OTHERWISE), INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ITS PRODUCTS, TECHNICAL SUPPORT SERVICES PROVIDED IN RESPECT TO ITS PRODUCTS, THE ACCOMPANYING PRODUCT MANUALS (IF ANY) AND OTHER WRITTEN MATERIALS (IF ANY).** To the greatest extent permitted by applicable law, the limitations and exclusions set forth in this paragraph 5 will apply regardless of whether liability arises from breach of contract, warranty, tort (including without limitation, negligence), by operation of law, or otherwise.

- 5.2 The foregoing warranty does not include (i) parts which are subject to normal wear and tear, (ii) expendable items, or (iii) the replacement of any such parts or items.
- 5.3 The foregoing warranty shall immediately lapse, and shall exclude all related claims for warranty, if the customer or any third party (i) modifies, repairs or maintains the delivered products other than as authorized in writing by OMICRON, (ii) modifies the technical specifications of the delivered products, (iii) otherwise alters or intervenes in the intended design of the delivered products, (iv) uses unsuitable data media, or (v) if notice of the defect is not given immediately by the customer to OMICRON. Also excluded from warranty is any product which has been subject to misuse, negligence, accident, inappropriate environment, or lack of normal maintenance or has been operated in any way other than its intended use.

## 6. Copyrights

The intellectual property rights in all products, software, devices and services, and in all related copyrights, patent rights, trademark rights or proprietary rights, shall be and remain OMICRON's sole and exclusive property.

## 7. Software Licenses

- 7.1 OMICRON shall grant to the customer a non-exclusive and non-transferable right to use any software product for which the customer acquires a license from OMICRON. Software licensed from OMICRON in conjunction with other products or devices is limited to and may only be used with the product or device to which such software relates.
- 7.2 The customer shall not assign, transfer, pledge or lease any licensing right granted to the customer by OMICRON or otherwise pass it on, share, give, devise or bequeath it to a third party.
- 7.3 With the exception of a backup copy, any duplication of any software, the documentation or any part thereof shall require the prior written consent of OMICRON.
- 7.4 The customer may not modify, transmit (either electronically or by any other means), translate, disassemble, decompile or otherwise modify any products, devices or software by reverse engineering unless OMICRON has given its prior written consent.

## 8. Repair

If a product or device is being sent to OMICRON for repair, all work must be performed in the plants or certified repair centers of OMICRON, and the customer shall be obligated to deliver such product or device to such plant or repair center at the customer's own risk and expense, together with a repair order. Upon completion of the repair service, OMICRON shall deliver the device CIP or FOB to the location from which the customer shipped it, all as determined by OMICRON in its sole, absolute and uncontrolled discretion. OMICRON shall pay transportation costs related to such return delivery, but shall not assume any liability for any loss of or damage to goods in transit.

## 9. Payment Terms and Delay in Payment

- 9.1 Within 30 days following receipt of an invoice, the customer shall pay such invoice in full, with such payment being made in immediately available funds in U.S. currency or such other currency as may be specified by OMICRON in the applicable quotation or other signed writing from OMICRON, and delivered to the bank account determined by OMICRON.
- 9.2 Should the customer default in timely payment, the customer shall compensate OMICRON for all expenses incurred by OMICRON in respect to such default, plus interest thereon at a rate equal to the lesser of one percent per month or the maximum non-usurious rate of interest permitted by applicable law.

## 10. Force Majeure.

Neither party shall be liable to the other party for any loss and damage in circumstances where the obligations under this Agreement cannot be performed, are delayed or hindered due to factors beyond the commercially reasonable control of the defaulting party (including, but not limited to, war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war or strife, rebellion, strikes, lockout or other industrial dispute or actions, Acts of God, acts of government or other prevailing authorities or defaults of third parties). If the factors prevent the Agreement being fulfilled for a period of six months, then the non-defaulting party may terminate this Agreement by notice in writing and both parties agree to negotiate in good faith an equitable settlement.

## 11. Confidentiality

The customer and OMICRON shall each keep strictly confidential all information received from the other in connection with their business relationship and their transaction, and neither the customer nor OMICRON shall disclose such information to any third party except as required by law; provided, however, OMICRON shall be entitled to use customer's data for any marketing purposes, e.g., providing customer references.

## 12. Final Provisions

- 12.1 Any document signed by an authorized representative of OMICRON, these General Sales Conditions and any Special Terms for Services shall constitute the entire agreement between the customer and OMICRON and may be amended or modified only with the mutual written consent of the customer and OMICRON.
- 12.2 In order to avoid misunderstandings, any changes of and amendments to these General Sales Conditions and any Special Terms for Services or other related agreements must be made in writing in order to be effective. Any waiver of any provisions of these General Sales Conditions and any Special Terms for Services or other related agreements, including any waiver of any rights or remedies of the parties thereunder, must be in writing to be effective. Any failure, neglect, or delay by a party to at any time enforce any such provisions, rights or remedies (i) will not be construed and will not be deemed to be a waiver of such party's rights, (ii) will not in any way affect the validity of all or any part of these General Sales Conditions and any Special Terms for Services or other related agreements, and (iii) will not prejudice such Party's right to take subsequent actions to enforce such provisions, rights or remedies.
- 12.3 Should one or more provisions of these General Sales Conditions and any Special Terms for Services or other related agreements or amendments, be determined to be illegal, invalid, or unenforceable, in whole or in part, then any such illegal, invalid or unenforceable provision (i) shall not affect the legality, validity or enforceability of the remaining provisions of these General Sales Conditions and any Special Terms for Services or other related agreements, and (ii) shall be replaced with a legal, valid and enforceable provision which is as similar as possible to the terms and intended economic purpose of the original provision.
- 12.4 All relationships between OMICRON and the customer shall be exclusively governed by the laws of the State of Texas (without regard to choice of law principles thereunder).
- 12.5 Both OMICRON and the customer shall make commercially reasonable efforts to settle out of court all Disputes by mediation. Should the parties fail to reach an agreement within a period of four weeks, any Dispute shall, at OMICRON's option, be finally settled by a court of competent jurisdiction in Houston, Texas or by final and binding arbitration conducted before an arbitral tribunal pursuant to the arbitration and conciliation rules of the International Chamber of Commerce by one or several arbitrators appointed in accordance with such rules. The place of arbitration shall be Houston, Texas. The language of the arbitration proceedings shall be English. The arbitral tribunal shall apply the law as specified in paragraph 12.4 above. The four-week period shall commence upon receipt of a contracting party's written request to settle a Dispute. For purposes of this paragraph 12.5, "Dispute" means any dispute arising from (i) the agreements, offers and deliveries by OMICRON or customer or (ii) any breach, annulment or invalidity of any provision of an agreement or offer.

12.6 The customer hereby consents that any data related to these General Sales Conditions or any Special Terms for Services may be stored on an Electronic Data Processing device by OMICRON and may be transmitted to other affiliates or business divisions of OMICRON as needed (i) to provide the contractual services or products, (ii) to handle the customer's affairs or (iii) for any business activities performed by OMICRON.