

NOTICE: Unless Reseller and ALE otherwise are parties to a master governing agreement, the terms and condition of sale contained herein shall apply to all purchase orders accepted by ALE. ALE's acceptance of Reseller's order is conditioned upon Reseller's acceptance of these terms and conditions irrespective of whether Reseller accepts them in writing, by implication or by acceptance of and payment for product and services sold or software licensed hereunder and irrespective of when the purchase order or procurement document is issued or whether it precedes or follows acceptance of this acknowledgement form. If these terms and conditions conflict with the terms and conditions of a purchase order or procurement document issued by Reseller, the terms and conditions contained herein shall govern. ALE's failure to object to provisions contained in any communications from Reseller shall not be deemed a waiver of the provision herein. These terms and conditions are deemed accepted by Reseller if not objected to in writing within 1 business day after the acknowledgment notice date hereof.

1. PRICES AND TAXES – Unless expressly stated to the contrary, ALE's prices include standard packing for domestic shipments, but do not include charges for related transportation costs. ALE will prepay transportation costs and invoice them to Reseller. Prices for products and software do not include charges for services (e.g. engineering and installation). Except for taxes on ALE's income, Reseller shall pay all applicable taxes and related charges, including any interest and penalties, that any governmental or taxing authority may impose upon the purchase, license, ownership, possession, use, operation or relocation of any product or software that ALE furnishes pursuant to these terms and conditions. If Reseller claims to be exempt from any taxes, then prior to passing of title to product, licensing of software or performance of services, Reseller shall deliver to ALE a lawful and proper exemption certificate in form and content acceptable to ALE. Reseller shall indemnify and hold harmless ALE for any and all liability, cost and expense associated with Taxes resulting from ALE's reliance on such certificates.

2. INVOICING & TERMS OF PAYMENT – ALE shall invoice Reseller all amounts due (including transportation charges and taxes) for products and software upon shipment. ALE will invoice all amounts due for maintenance, management and other recurring services in advance and charges for engineering, installation, and other nonrecurring services as incurred. Upon and subject to credit approval by ALE, payment terms shall be net 30 days after the invoice date. Reseller shall notify ALE of any billing discrepancies within 10 days after receiving it. Overdue payments shall be subject to a late payment charge of 1½% per month of the overdue amount. Reseller will reimburse ALE for reasonable attorneys' fees and other costs associated with collecting delinquent payments. If at any time Reseller is delinquent in the payment of any invoice, or otherwise in breach of these terms and conditions, ALE may, at its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) and/or suspend performance on any purchase order. Reseller hereby grants ALE a security interest in all products and software, and all proceeds of them in any form to secure payment and performance of all obligations of Reseller to these terms and conditions.

3. GRANT OF LICENSE – Upon delivery of software, ALE grants Reseller a personal, nontransferable and nonexclusive license to sub-license software as part of a bundled offer to its End Customers subject to the terms and conditions of the ALE standard software license agreement terms ("SLA") and all terms herein. In no event shall the purchase by Reseller of a software license from ALE be deemed a "sale" by ALE to Reseller of a "copy of a program". Specifically, Reseller shall deliver and legally bind each End Customer to the requirements outlined in the SLA prior to the installation or use of the software by the End Customer. Reseller shall advise each End Customer that the End Customer cannot use any software unless and until the End Customer executes an agreement with Reseller incorporating the SLA. The terms of the SLA shall survive any termination or expiration of this Agreement. Reseller agrees that it shall not, without ALE's prior written consent, grant a sublicense to use any software or documentation to an End Customer who is a manufacturer, or affiliated with a manufacturer, of products which compete with any ALE products. If the product(s) on which the software was loaded or designated by ALE to be loaded become inoperative, End Customer may use the software temporarily on a backup processor until the original processor is restored. Reseller or End Customer shall not directly or indirectly: (a) modify, copy, transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any portion of the software; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any software; (d) disclose or otherwise make available the software to any third party; or (e) use the software except in accordance with this Article; (f) enable any software features or capacity which ALE licenses as separate products, without ALE's prior written consent. End Customer may make one copy of any software for backup and archival purposes if the copy contains all of the ALE proprietary notices contained in the original software. End Customer shall maintain records of the number and location of all copies of software. ALE may, at its discretion, electronically audit software provided hereunder to verify compliance with the license provisions. If End

Customer's license is canceled or terminated, or when End Customer no longer uses the software, End Customer shall return or destroy the software and all copies and certify to Reseller that it has done so. If these terms and conditions differ from the terms of any license agreement packaged with software, the terms of the license agreement in the packaged software shall govern. ALE's licensors shall be third party beneficiaries of this agreement with respect to their software.

4. WARRANTY – The warranties and remedies stated in this Section are transferable to Reseller's End Customer upon delivery to the End Customer

A. During the Warranty Period, ALE warrants to Reseller only that for the applicable warranty period set forth in Section B below: (a) product and software media purchased hereunder and manufactured by ALE (including those manufactured for ALE by a contract manufacturer and based on ALE's procurement specification), under normal use and service, will be free from defects in material and workmanship; (b) product and software will materially conform to ALE's specifications in effect on the date of shipment; and (c) the services will be performed in accordance with ALE standards, or in the absence of such standards, in a professional and workmanlike manner. However, ALE makes no warranty that any software will operate uninterrupted or error free. With respect to products or partial assembly of products furnished by ALE but not manufactured by ALE, ALE hereby assigns, to the extent permitted, the warranties given to ALE by its vendors of such items.

B. The warranty period applicable to ALE products is 13 months and Software is 4 months. The warranty period for products and software begins on the date of shipment except if ALE performs installation services for any product or software, in which case the warranty period begins on the date of product acceptance as determined in accordance with Article 8. The warranty period for services is 30 days from the date of completion.

C. If any product is not as warranted in this Article, then (a) Reseller shall obtain from ALE a return authorization number, and return the product at its expense, together with the authorization number and a detailed description of the problem, to ALE's designated repair facility; and (b) ALE shall repair or replace the product and return it at ALE's expense to Reseller's point of shipment. ALE shall assume the risk of loss or damage to any product returned to ALE for repair or replacement from receipt thereof until delivery to Reseller's point of shipment. If any software is not as warranted in this Article, then, upon notice from Reseller, ALE shall correct the software by (c) electronic means or (d) delivery to Reseller of suitable media chosen solely by ALE. If ALE ascertains that product is not readily returnable for repair, then at its option, ALE may elect to repair or replace the product at Reseller's site. In such instances, Reseller, at its expense, shall make the product accessible for repair or replacement and shall restore the site after ALE has completed its repair or replacement. If, ALE determines that it cannot, in a commercially reasonable manner: (i) repair or replace any product, (ii) correct any software, or (iii) correct any services, then ALE may, in its sole discretion, refund to Reseller the price of the product or services, less a reasonable adjustment for beneficial use. In repairing or replacing any product, part of product, or software medium under this warranty, ALE may use new, remanufactured, reconditioned, refurbished, or functionally equivalent product, parts of product, or software medium. For any product or parts thereof repaired, replaced or corrected under this Article, the warranty period applicable to the product will continue for the longer of (i) the remainder of the original warranty period or (ii) 90 days after the date of shipment of the repaired or replaced product. The warranty period for the corrected software via fixes and/or patches will be the remaining period of the original warranty period. If services performed by ALE prove not to have been so performed, and Reseller notifies ALE to that effect within 10 business days commencing on the date of the performance of the service giving rise to the claim then ALE, at its option, either will correct all confirmed defects and deficiencies in the performance of the services or render a credit for the defective or non-conforming portion of the services based on the original charge for the services

D. No product or software will be accepted for repair or replacement without the written authorization of and in accordance with instructions from ALE.

Removal and reinstallation expenses as well as transportation expenses associated with returning such product or software to ALE shall be borne by Reseller. If ALE determines that any returned product or software is not defective, Reseller shall pay ALE's costs of handling, inspection, testing and transportation and, if applicable, travel and living expenses. In repairing or replacing any product, part of product, or software medium under this warranty, ALE may use new, remanufactured, reconditioned, refurbished or functionally equivalent products, parts or software media. If ALE ascertains that a product is not readily returnable for repair, at its option, ALE may elect to repair or replace the product at Reseller's site. Reseller, at its expense, shall make the products accessible for repair or replacement and shall restore the site after ALE has completed its repairs or replacement.

E. ALE has no obligation to repair or replace any product, correct any software, or correct any services if (a) the product or any software has been modified, repaired or reworked by anyone other than ALE; or (b) the defect is the result of (i) any improper storage, handling or use by anyone other than ALE, (ii) failure to provide a suitable climatic environment, (iii) operator error, (iv) improper installation of product by anyone other than ALE, (v) use in a manner not in accordance with the Documentation, (vi) failure to implement any new releases or update to the software, (vii) any use of the product in conjunction with another non-ALE product (except to the extent provided in the Documentation), (viii) consumable items, including fuses, light bulbs, motor brushes and the like, (ix) products which have had their serial numbers or month and year of manufacture removed, altered, defaced, or deleted, or (x) any damage by power failure, fire, explosion or any act of God or other cause beyond ALE's control. The warranties set forth in this Article are nontransferable. No warranty is made that software will run uninterrupted or error free.

F. THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE FOR PRODUCTS AND SERVICES IS THE EXCLUSIVE WARRANTY. ALE DISCLAIMS ALL OTHER WARRANTIES IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE REMEDY PROVIDED UNDER SECTION 4C IS RESELLER'S EXCLUSIVE REMEDY FOR FAILURE OF PRODUCTS OR SERVICES TO CONFORM TO THE WARRANTY.

5. INFRINGEMENT – A. ALE will: (i) defend Reseller or End Customer against any claim, action or proceeding brought against Reseller or End Customer alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party (other than an affiliate of Reseller or End Customer) by reason of the use, in accordance with ALE's specifications, of any product manufactured or developed by ALE (a "Claim") and provided to Reseller or End Customer under this Agreement; and (b) shall indemnify Reseller or End Customer against, and hold Reseller or End Customer harmless from, any and all costs and damages assessed against Reseller or End Customer in a final judgment on such Claim, if: (i) Reseller or End Customer gives ALE prompt written notice of the Claim, (ii) Reseller or End Customer grants to ALE the sole authority to assume the defense thereof, and the sole right to settle the Claim, through counsel chosen by ALE, and (iii) Reseller or End Customer furnishes all information and assistance requested by ALE and reasonably cooperates with ALE to facilitate the defense and settlement of the Claim.

B. If End Customer's use of any product is enjoined as a result of any Claim, subject to a Claim, or in ALE's opinion is likely to be enjoined or be subject to a Claim, then, at its expense, ALE may: (a) procure for End Customer the right to continue to use the product; or (b) replace or modify the product with a functionally-equivalent or better product so that End Customer's use is not subject to a Claim. If ALE determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon ALE's request, (a) End Customer shall deliver the product to Reseller, and (b) ALE shall promptly refund to Reseller the price of the product less a reasonable allowance for use.

C. ALE shall have no obligations under this Article with respect to a Claim to the extent that it: (a) arises from adherence to design modifications, specifications, drawings or written instructions which Reseller or End Customer directs ALE to follow, (b) relates to uses of any product in combination with any item not provided directly by ALE, if use of the product alone would not have resulted in such infringement, (c) relates to the use of any product in a manner not contemplated by this Agreement or (d) relates to a modification of any product by any person other than ALE. Furthermore, Reseller or End Customer shall defend ALE against any Claim, and indemnify ALE against, and hold ALE harmless from, any and all costs and damages incurred by ALE arising from any such Claim.

6. RESELLER REMEDIES – Reseller's exclusive remedies and the entire liability of ALE and its affiliates and their respective employees, directors, officers, agents, and suppliers for any and all claims, losses, damages and expenses (including attorneys' fees) ("Losses") of Reseller or any other person arising out of this agreement or the use or performance of any product or software, whether in an action for or arising out of breach of contract, tort, including negligence, indemnity, or strict liability, shall be as follows: (i) for Infringement Claims --the remedy set forth in the "Infringement" Section; (ii) for the non-performance of or defects in products or software - the remedy set forth in the "Warranty" Section; (iii) for tangible property damage and personal injury caused by ALE's acts or omissions - the amount of the proven direct damages; and (iv) for everything other than as set forth above - the amount of the proven direct damages not to exceed ten percent of the total prices paid by Reseller. Reseller shall give ALE prompt written notice of any claim. Any action or proceeding against ALE must be brought within 24 months after the cause of action accrues. Notwithstanding any other provision of this agreement, ALE and its affiliates and their respective employees, directors, officers, agents, and suppliers shall not be liable for any incidental, indirect, consequential, or exemplary damages or for any lost profits, lost revenues, lost data and other economic losses arising out of this agreement, or resulting from the use or performance of any product or software, whether in an action for breach of contract, tort, including negligence, indemnity or strict liability. This Section shall survive failure of an exclusive or limited remedy.

7. EXPORT CONTROL – Reseller acknowledges that products, software, and technical information (including, but not limited to, services and training) provided hereunder are subject to U.S. export laws and regulations and any use or transfer of such products, software, and technical information must be authorized under those laws and regulations. Reseller agrees not to use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by ALE, Reseller will sign written assurances and other export-related documents as may be required for ALE to comply with U.S. export regulations.

8. GENERAL – A. Title to products only and risk of loss and damage to products and software shall pass to Reseller upon shipment. ALE retains title to all software and all copies thereof.

B. Products and software will be deemed accepted upon shipment to Reseller. Products and software for which installation by ALE is required by ALE will be deemed accepted upon ALE's notifications of installation complete and verification that the products and software comply with their ALE's specifications.

C. If Reseller fails to perform any material term or condition of this agreement (including any payment obligation) and such failure continues for 30 days (except for payment obligations which shall be 10 days) after receipt of written notice, Reseller shall be in default and ALE may terminate this agreement and exercise any available rights. Upon such termination, Reseller shall be liable for cancellation and/or termination charges and any other applicable charges.

D. The laws of the State of California as applied to contracts formed and intended to be performed within such state without giving effect to its conflicts of law principles shall govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including its interpretation, construction, performance and enforcement. Each Party hereby waives its right to trial by jury of any claim or controversy arising under or related to this Agreement. A Party bringing a legal action or proceeding against the other Party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding in the United States District Court for the Northern District of California. Each Party consents to the exclusive jurisdiction of the United States District Court for the Northern District of California and its appellate courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates.

E. Reseller certifies that the products and software are intended for resale and not for its own use within the United States in the ordinary course of business. Reseller undertakes to include in the contract to be entered into by and between Reseller and the End Customer terms substantially equivalent to those contained herein.

F. Reseller may not assign this agreement or any of Reseller's rights or obligations hereunder without ALE's prior written consent. ALE may assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement without the prior consent of Reseller. Nothing precludes ALE from employing a subcontractor in carrying out its obligations under this

Agreement. ALE's use of such subcontractor will not release ALE from its obligations under this Agreement. Any purported assignment of rights or delegation of obligations in violation of this section is void ab initio.

G. Neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, inability to secure raw material or transportation facilities, act or omission of carriers or any other causes beyond its control whether or not similar to the foregoing. In the event of such delays, the schedule shall be extended for the duration of the delaying cause. Despite the preceding sentences, a party is not excused from making any payment hereunder due to acts or events beyond its reasonable control.

H. No course of dealing or failure of either party to strictly enforce any term, right or condition hereof shall be construed as a waiver of such term, right or condition.

I. At any time prior to delivery, ALE may make changes to the products or software in whole or in part including any electrical or mechanical design refinements that ALE deems appropriate, or as required by law or concerns of safety. ALE shall not be obligated to modify or change any product previously delivered or to supply products in accordance with earlier specifications. Changes to any Reseller order shall be in accordance with ALE's change order process.

J. All technical and business information (including software), in whatever form, marked proprietary or confidential, or, if not in tangible form, described as being proprietary or confidential at the time of disclosure and subsequently summarized in writing so marked and delivered to the receiving party within 30 days of disclosure to the receiving party ("Information") shall remain the property of the disclosing party. The disclosing party grants the receiving party the right to use such Information only as follows: such Information (i) shall not be reproduced or copied, in whole or part, except for use as authorized herein; and (ii) shall, together with any full or partial copies thereof, be returned or destroyed when no longer needed. The receiving party shall use such Information only for purposes of its performance under this form and shall treat and protect such Information in the same manner as it treats its own information of like character, but in no event less than reasonable care. The receiving party may disclose such Information to other persons solely to enable such third party to perform acts which this section expressly authorizes the receiving party to perform provided such other person agrees in writing (a copy of which writing will be provided to the disclosing party at its request) to the same conditions respecting use of Information.

K. ALE'S ACCEPTANCE OF RESELLER'S PURCHASE ORDER IS CONDITIONED ON THE FOLLOWING: THIS PURCHASE ORDER ACKNOWLEDGMENT IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR COMMUNICATIONS, AGREEMENTS (OTHER THAN NON-DISCLOSURE AGREEMENTS) OR PROPOSALS, ORAL OR WRITTEN, RELATING TO THIS SUBJECT MATTER. ANY TERMS ON A PURCHASE ORDER, OTHER THAN A DESCRIPTION OF THE PRODUCT AND/OR SOFTWARE AND QUANTITY ORDERED, ARE NULL AND VOID.