



Proportional Technologies, Inc.

(713) 747-7324 • Fax (713) 747-7325

12233 Robin Blvd., Houston, TX 77054

<http://www.proportionaltech.com>

PROPORTIONAL TECHNOLOGIES, INC. STANDARD TERMS AND CONDITIONS OF SALE

- 1. INTERPRETATION.** "Buyer" means the purchase of Goods from the Seller; "Buyer Group" means the Buyer and its Group; "**Group**" means a party's parent (if any), subsidiaries, affiliates, co-venturers, partners, its and their respective customers, representatives and agents and its and their respective directors, officers, employees, contractors and subcontractors (of any tier and who are not included in the counterparty Group); "**Seller**" means the selling entity identified in the quotation or purchase order; and "**Seller Group**" means the Seller and its Group.
- 2. APPLICABILITY.** These Standard Terms and Conditions apply to all the Seller's Goods to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer refers to or purports to apply under any purchase order, confirmation of order, specification or other document) and any modifications, variations and/or any representations about the products shall have no effect unless expressly agreed in writing and signed by an authorized signatory of the Seller. Any written or oral order or acceptance of Seller's quotation by the Buyer shall be construed as a written acceptance by the Buyer of the Seller's offer to sell on these Standard Terms and Conditions. No order placed by the Buyer shall be deemed to be accepted by the Seller until an order acknowledgement is made by the Seller, or (if earlier), the Seller delivers the Goods to the Buyer.
- 3. PRICES.** Unless Seller and Buyer otherwise agree in writing to payment terms other than those specified herein, payment shall be made in U.S. dollars in accordance with remittance instructions furnished by Seller. In some cases, if specified by Seller in the purchase order, Seller may offer Buyer a thirty (30) day trial period during which Buyer may return the Goods to Seller with no monies due. In such cases where Seller has agreed to a trial period, if Buyer does not return the Goods to Seller within thirty (30) days of delivery of the Goods to Buyer, Buyer agrees to purchase the Goods for the full price stated in the purchase order. ***All payments shall be made in US dollars according to Terms of Payment specified on formal Price Quote.*** Time for payment shall be of the essence. Seller may suspend credit to Buyer and suspend or cancel performance under these Standard Terms and Conditions if in its sole judgment the financial condition of the Buyer warrants such action. The Buyer shall make all payments due under the order in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise. All payments payable to

the Seller under the order shall become due immediately on its termination despite any other provision. Seller reserves the right to place a service charge on past due accounts at the highest rate allowed by law and Buyer agrees to pay Seller's collection and court costs for recovery of past due amounts.

- 4. FORCE MAJEURE.** Seller reserves the right to defer the dates of delivery and/or performance, to cancel the order, or reduce the volume and/or amend the scope ordered by Buyer (without liability to Buyer) if it is prevented from or delayed in the carrying out of its business due to circumstances beyond its reasonable control, including but not limited to: Acts of God; changes in law or governmental actions; fire; explosion; lock-outs, strikes and/or labor disputes; civil commotion; acts of terrorism; restraints or delays in transportation; restraints or delays in manufacturing and inability of Seller to obtain adequate or suitable supplies from usual sources, or acts of Buyer resulting in commercial impracticality. In the event of any such delay, the date of delivery and/or performance shall be deferred for a period equal to the time lost by reason of the delay.
- 5. LIMITED WARRANTY.** Seller warrants title to Goods and that Goods shall be free from defects in workmanship. Seller's obligation under this warranty shall be limited to repair or replacement of the Goods within 1 year (365 days) from the date of initial delivery of the Goods, provided that Buyer gives Seller prompt notice of any defect and provides satisfactory proof. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESSED OR IMPLIED OR STATUTORY AND SELLER MAKES NO WARRANTY OF FITNESS OR MERCHANTABILITY, SELLER'S WARRANTY OBLIGATIONS AND BUYERS REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. A NEW WARRANTY PERIOD SHALL NOT BE ESTABLISHED FOR REPERFORMANCE OF GOODS. SUCH GOODS SHALL REMAIN UNDER WARRANTY ONLY FOR THE REMAINDER OF THE WARRANTY PERIOD ON THE ORIGINAL SERVICE. SELLER'S SOLE LIABILITY SHALL BE AT ITS OPTION TO REPAIR OR REPLACE THE GOODS, OR TO CREDIT BUYER'S ACCOUNT FOR SUCH GOODS.
- 6. INTELLECTUAL PROPERTY.**

 - 6.1 Seller shall remain the sole and exclusive owner of any and all intellectual property to the full extent Seller's intellectual property is incorporated into the Goods.
 - 6.2 Seller grants Buyer a perpetual, non-exclusive, worldwide, non-transferable, and nonpubliclicenseable, revocable license to use Seller's intellectual property to the extent such property is incorporated into the Goods. Buyer may not: (a) reproduce, publicly display, publicly perform, distribute, or create derivative works from Seller's intellectual property or the Goods; or (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive or access any of the Seller's intellectual property or the Goods.
 - 6.3 In the event Seller has agreed to develop a modification to the Goods for Buyer's sole use, Buyer must advise Seller of this restriction prior to development. Upon receipt of such notice, the modification shall be designated as a "Buyer-Specific Modification" and identified as such in the associated purchase order. The parties agree that the Buyer-Specific Modification shall remain the sole property of Seller;

however, Buyer shall retain a license to use such Buyer-Specific Modification for so long as Buyer retains a license to use the Goods to which such Buyer-Specific Modification is made. Seller agrees that it shall not make a Buyer-Specific Modification available or disclose a Buyer-Specific Modification to a third party without Buyer's prior written consent. Notwithstanding the foregoing, Buyer acknowledges that Seller is in the business of providing Goods to many customers within Buyer's industry and nothing contained herein shall prevent Seller from independently developing Goods which perform the same or similar function as the Buyer-Specific Modification.

7. CONFIDENTIALITY.

- 7.1 "Confidential Information" means any information concerning technical matters, Seller's intellectual property, personnel, company financials, business dealings, commercial matters or other subject matters disclosed by Seller to Buyer, orally, visually or in any other form including written or printed documents, electronic documents, computer files, all samples, models, photographs, drawings and more generally all means for disclosing Confidential information to Buyer.
- 7.2 For a duration of 10 years, the Buyer agrees not to disclose the Confidential Information to any third party and to protect the confidentiality of the Confidential Information with a reasonable degree of care, and to only use the Confidential Information for the purpose of the furtherance of these Standard Terms and Conditions and for no other purpose. Buyer shall limit access to Confidential Information only to employees that need to know only after such employees have been informed of the confidential nature of the Confidential Information.
- 7.3 Confidential Information does not include information that was already in the Seller possession or in the public domain at the time of disclosure to Buyer, or is independently developed by Buyer without reliance upon Seller's disclosure of Confidential Information.

8. EXPORT COMPLIANCE.

Seller recognizes Incoterms 2000 as published by the International Chamber of Commerce and adopts EXW (EX WORKS) classification in conjunction and support to this Standard Terms of Terms and Condition. **Where the Goods are to be exported by Buyer after delivery by Seller**, Buyer shall take all necessary measures and be solely responsible for complying with any and all legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on the Goods. **If there is any conflict between Incoterms and these Standard Terms and Conditions**, the terms of these Standard Terms and Conditions prevail. Buyer shall be solely responsible for taking all necessary measures to comply with all U.S. Export Control laws and regulations concerning the Goods once delivered to Buyer. If due to an export embargo Seller is unable to perform any of the obligations under these Standard Terms and Conditions, Seller shall not be held responsible for any loss or damage which Buyer may incur as a result of such failure.

9. LIMITATION OF LIABILITY.

- 9.1 BUYER AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD SELLER GROUP HARMLESS FROM AND AGAINST ANY AND ALL LOST OR ANTICIPATED PROFITS, COST OF CAPITAL, LOSS OF GOODWILL, OR ANY OTHER SPECIAL, INCIDENTAL,

INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES INCURRED BY THE BUYER GROUP AND ITS CO- VENTURERS, JOINT OWNERS, CUSTOMERS AND ITS AND THEIR OTHER CONTRACTORS OF EVERY TIER, REGARDLESS OF CAUSE, AND EVEN IF CAUSED BY THE SOLE, JOINT, COMPARATIVE, CONTRIBUTORY OR CONCURRENT NEGLIGENCE, FAULT, STRICT LIABILITY OR PRODUCT LIABILITY OF THE SELLER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, INDEMNITY, STATUTE, STRICT LIABILITY OR OTHERWISE.

- 9.2 THE TOTAL LIABILITY OF SELLER GROUP ON ANY CLAIM WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE WHETHER SOLE OR CONCURRENT) OR OTHERWISE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE FURNISHING OF ANY GOODS SHALL NOT EXCEED THE PRICE PAID TO THE SELLER FOR THE GOODS GIVING RISE TO A CLAIM.

10. INDEMNITIES.

- 10.1 IF BUYER RECEIVES A CLAIM OR OTHERWISE BECOMES AWARE THAT ANY PRODUCT OR PART THEREOF MANUFACTURED BY SELLER INFRINGES OR ALLEGEDLY INFRINGES A PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT, BUYER SHALL NOTIFY SELLER IMMEDIATELY IN WRITING AND GIVE SELLER INFORMATION, ASSISTANCE AND EXCLUSIVE AUTHORITY TO EVALUATE, DEFEND AND SETTLE SUCH CLAIM OR POTENTIAL INFRINGEMENT. SELLER SHALL THEN AT ITS OWN EXPENSE AND OPTION (A) SETTLE SUCH CLAIM, OR (B) PROCURE FOR BUYER THE RIGHT TO USE SUCH PRODUCT, OR (C) REPLACE OR MODIFY IT TO AVOID INFRINGEMENT, OR (D) REMOVE IT AND REFUND THE PURCHASE PRICE LESS A REASONABLE AMOUNT FOR DEPRECIATION, OR (E) DEFEND AGAINST SUCH CLAIM. OTHER THAN TAKING THE ABOVE ACTIONS, SELLER SHALL HAVE NO LIABILITY TO THE BUYER IN RESPECT OF ANY LOSS CAUSED BY SUCH ALLEGED INFRINGEMENT.
- 10.2 EXCEPT AS PROVIDED IN 10.1, BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER GROUP FROM AND AGAINST ANY AND ALL CLAIMS FOR LOSS, LOSSES, LIABILITIES, EXPENSES, DAMAGES AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS, ARISING OR RESULTING FROM BUYER'S USE OF THE GOODS OR IN CONNECTION WITH THESE STANDARD TERMS AND CONDITIONS, AND WHETHER OR NOT RESULTING FROM OR CONTRIBUTED BY THE NEGLIGENCE OF SELLER GROUP, INCLUDING LOSS OR DAMAGE TO PROPERTY, PERSONAL INJURY AND DEATH, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT, BREACH OF CONTRACT, BREACH OR WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, OR ANY OTHER CAUSE OF ACTION.
- 10.3 To the extent any of the indemnities in this Section 10 are unenforceable, the this Section is amended to comply to the fullest extent permissible under the applicable laws.

- 11. GOVERNING LAW; JURISDICTION.** These Standard Terms and Conditions of Sale shall be governed and construed in accordance with the laws of the State of Texas, exclusive jurisdiction of Harris County, Texas, without giving effect to any conflicts of laws principles. THE PARTIES HEREBY, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVE THEIR RIGHT TO A JURY TRIAL.

12. WAIVER. Any waiver by Seller of any breach or default by Buyer of any of the Buyer's obligations thereunder, or any failure by Seller to enforce any rights arising hereunder shall not be construed as a waiver of any other or subsequent breach or default by Buyer or of Seller's right to enforce its rights arising hereunder in any circumstances. In the event of any default by Buyer, Seller may decline to deliver further Goods. If Seller elects to continue to deliver further Goods, Seller's action shall not constitute a waiver of any such default or affect Seller's legal remedies for any such default.

13. ENTIRE AGREEMENT. These Standard Terms and Conditions of Sale constitute the entire agreement between the parties relating to the performance of Goods and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof. No prior representations or statements relating to the performance of Goods made by any Seller representative, which are not stated herein, shall be binding on Seller.