

TERMS OF SALE FOR LIPPERT Embedded Computers, Inc.

1. Purchase of Products.

(a) Except to the extent otherwise agreed upon in writing, the terms set forth herein shall govern the sale and delivery of the products described on the reverse side hereof (the "Equipment") (collectively, the Equipment and all Software (as defined herein) and documentation delivered in connection with the Equipment, are referred to herein as the "Products") by Lippert Embedded Computers, Inc. ("Seller") as modified by Lippert in its sole discretion and purchased by the purchaser named on the reverse side hereof ("Purchaser").

(b) All dealings between the parties shall be in writing and governed by the terms and conditions set forth herein. No order of Purchaser shall be binding on Seller until approved in writing by Seller. Pre-printed terms and conditions on or attached to Purchaser purchase orders shall be of no force or effect.

(c) Prices of Products are subject to change without notice, and all references in sales brochures, technical data sheets and offers as to size, weight, and other details of the Products are approximate only. No such term shall be binding on Seller unless expressly incorporated in a purchase order which is approved and accepted by Seller in accordance with the terms hereof.

(d) Purchaser shall comply with any governmental laws, orders or other restrictions on the export and re-export of the Products and the accompanying software (including technical data and any related information and documentation) which may be imposed from time to time by the governments of the United States and any country to which the Products and the accompanying Software are shipped.

(e) ACCEPTANCE OF THIS ORDER BY PURCHASER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN, AND ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN PURCHASER'S RESPONSE HERETO SHALL BE DEEMED OBJECTED TO BY THE SELLER WITHOUT NEED FOR FURTHER NOTICE OF OBJECTION AND SHALL BE OF NO FORCE AND EFFECT NOR IN ANY CIRCUMSTANCES BINDING UPON SELLER. NEITHER SELLER'S COMMENCEMENT OF PERFORMANCE NOR DELIVERY SHALL BE DEEMED OR CONSTRUED AS ACCEPTANCE OF PURCHASER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. BY RESPONDING TO THIS OFFER TO SELL, PURCHASER SHALL BE DEEMED TO HAVE ACCEPTED ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN.

(f) Purchaser acknowledges that Seller's acceptance of any purchase order is dependent on Seller's prior approval of Purchaser's credit. Purchaser agrees that Seller may demand assurances of Purchaser's ability to pay by requesting such trade or banking references or such other information as deemed adequate by Seller.

(g) All rights to technical data sheet, documentation and Intellectual Property Rights associated with the Products shall remain Seller's property. As used in this Agreement, "Intellectual Property Rights" means copyright rights, patent rights, trade secret rights, and any other proprietary rights in or to intangible property recognized in any jurisdiction in the world, now or hereafter existing, whether or not registered or registerable.

2. Delivery.

(a) Unless expressly agreed upon in writing to the contrary, the terms of delivery are F.O.B. Seller's loading dock. Seller will use commercially reasonable efforts to make the Products available for pick-up and delivery by Purchaser within a reasonable time after acceptance of an order from Purchaser.

(b) All shipments of Products shall include a list of Product items shipped. Standard packaging shall be chosen by Seller. If Purchaser requests non-standard packaging, Purchaser shall reimburse Seller for the costs associated therewith.

(c) Purchaser bears the risk of loss or destruction of the Products upon and after the first to occur of (i) pick-up by or delivery to the Purchaser or its common carrier at Seller's place of business, or (ii) the tenth day after written notification from Seller that the Products are ready for pick-up at Seller's place of business. In case Purchaser requests a delay in delivery, Purchaser assumes all risk of loss, damage and/or destruction of the Products from the date the Products are ready to be delivered.

(d) Purchaser agrees that it will pick up or cause a common carrier to pick up the Products at Seller's place of business within ten (10) days after written notification from Seller that such Products are ready for pick-up. If Purchaser or its common carrier does not pick up or accept the Products within ten (10) days after written notification from Seller that the Products are ready for pick-up or if Seller is required to store the Products due to any delay caused by Purchaser, Purchaser shall reimburse Seller for reasonable storage charges.

(e) Seller reserves the right to make the Products available for pick-up and delivery in installments provided that such installment shall not be less than one product unit, unless otherwise expressly stipulated to the contrary in a written document signed by Seller. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining deliveries.

(f) If Purchaser should request any modification of the order after Seller's acceptance, Seller shall have the right to extend the delivery time period as reasonably needed to complete Purchaser's change order and to adjust the terms of sale and purchase price in its sole discretion.

3. Force Majeure. Notwithstanding anything to the contrary, Seller shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond its control. If any delays exist for more than ninety (90) days either party may terminate this Agreement upon thirty (30) days written notice with respect to the Products that have not been manufactured on the date of termination.

4. Warranties and Claims.

(a) Seller warrants, to Purchaser only, that the Products sold hereunder will meet or exceed the applicable specifications to which Purchaser and Seller have agreed to in writing. Seller further warrants that the Seller shall convey good and merchantable title to Purchaser and the Equipment shall be delivered free and clear from any lawful lien or encumbrance. The warranties provided by Seller hereunder shall be for a period of two (2) years from the date of delivery of the Products in accordance with the terms provided herein.

(b) Any claim regarding any defect or inconformity under the above warranty which is obvious and a casual inspection would disclose must be made in writing to Seller within three (3) business days after Purchaser's receipt of the Products and before Purchaser utilizes the Products in a non-test environment. All other claims under this warranty must be made in writing to Seller within five (5) business days after the alleged defect is discovered, with such notice describing with reasonable specificity the alleged defect. Failure of the Purchaser to give such written notice within the timeframe noted above, or the use of the Purchaser of the Products in a non-test environment, shall be deemed an irrevocable acceptance of the Products and a waiver of any claim that

the Products are defective or breach any warranty in any respect.

(c) Warranty claims made pursuant to subsection (b) above, shall be subject to Seller's reasonable determination that the Products did not meet the Warranty granted hereunder, and Seller's sole obligation shall be to replace the non-conforming Products with conforming Products, or to cancel the order and return to the Purchaser the purchase price paid for the Products to date, in Seller's sole discretion. If Seller requires, Purchaser shall return to Seller all non-conforming Products.

(d) Exceptions. **The warranty provided in Section 4(a) shall only apply if the Products have been properly used under normal conditions and otherwise in compliance with the technical manual and data sheet of each product. Any unauthorized alteration or modification of the Product will void this warranty. Seller shall not be liable for any claims resulting from misuse, negligence, modification, abuse, improper or faulty use, improper Product application or storage, normal wear and tear, failure to comply with Seller's instructions, improper or faulty manufacturing due to defective or improper parts, materials or designs and blue prints provided by Purchaser. Furthermore, Seller shall not be liable for any claims arising out of and resulting from defective and faulty parts, components or materials provided by any third party to Seller and shall assign any related rights or claims that Seller has against such third party to Purchaser.**

(e) EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4(A), SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH WARRANTIES ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT. PURCHASER ACKNOWLEDGES THAT PURCHASER IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH PRODUCTS SUITABLE FOR ANY PARTICULAR PURPOSE OR JOB, OR TO DETERMINE THE FEASIBILITY OF THE PRODUCTS FOR ANY PARTICULAR APPLICATIONS. PURCHASER ACKNOWLEDGES THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION HEREIN. NEITHER SELLER NOR ANY OF ITS AFFILIATES SHALL BE LIABLE FOR, AND PURCHASER WAIVES ANY CLAIM AGAINST SELLER AND ITS AFFILIATES FOR, MULTIPLE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF OTHER PROPERTY OR PRODUCTS, LOSS OF PROFITS OR REVENUE, INFRINGEMENT, LOSS OF DATA, LOSS OF USE OF MACHINERY OR PARTS THEREOF, INABILITY TO PERFORM SPECIFIC PROJECTS, COST OF CAPITAL, INJURIES TO OR DEATH OF PERSONS OR DAMAGE TO EITHER TANGIBLE OR REAL PROPERTY OR CLAIMS RESULTING FROM CONTRACTS AND/OR AGREEMENTS BETWEEN PURCHASER, ITS CUSTOMERS AND/OR SUPPLIERS, IN EACH CASE WHICH IN ANY WAY RELATE TO THE PURCHASE OF PRODUCTS BY PURCHASER, THE USE OF THE PRODUCTS OR THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A CONDITION AND MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.

5. Installation.

(a) If purchased by Purchaser, Seller shall provide for Purchaser the services of installation, setting up and bringing into operation the Products purchased from Seller. In this case:

(i) Purchaser shall exclusively be responsible for and at its expense: (a) provide utilities, third party

equipment, standard tools and other standard service materials as well as water, heating, air conditioning and electricity, all in accordance with the requirements and conditions necessary to operate the Products as set forth in the technical manual and data sheet of each product., and (b) otherwise prepare the Purchaser's facility for the installation of the Products, including any necessary alterations to the Purchaser's facility, and will provide Seller with all assistance reasonably required by Seller to perform such installation;

(ii) Storage of machine parts, material and tools in adequate storage areas. Purchaser shall be liable payment of the costs incurred in connection with the installation;

(iii) Purchaser shall be liable for the safety of the assembly personnel and make available to the assembly personnel safety devices as reasonably deemed necessary.

6. Prices.

(a) All prices quoted by Seller are in U.S. funds and shall be on a net basis F.O.B. Seller's loading dock. Prices include the cost of Seller's factory quality tests and inspection. For sales to countries other than the United States, prices do not include export/import duties, customs fees or brokerage fees unless otherwise indicated in the quotation.

(b) All prices quoted by Seller are subject to adjustment due to Purchaser's change orders, if any. Prices can be increased without notice by Seller in its sole discretion.

(c) Unless otherwise expressly agreed upon in writing, the price quoted excludes the cost of packaging and the cost of special containers, packaging, crating, palletizing, applicable taxes and duties, shipping, insurance or other incidental expenditures of Seller.

7. Payment.

(a) Payment shall be made in cash or wire transfer in immediately available U.S. funds according to the terms specified on the reverse side hereof. Seller may charge Purchaser interest on the outstanding balance of any overdue fees, charges or expenses at a rate equal to 1% per month or the highest rate permitted by applicable law, whichever is lower.

(b) All amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Purchaser will promptly pay, and indemnify Seller against, all taxes and duties assessed in connection with any such amounts, this Agreement and its performance by any authority within or outside of the U.S., except for taxes payable on Seller's net income.

(c) Purchaser shall not withhold, offset or otherwise reduce payments on account of complaints, claims, or counterclaims not acknowledged and accepted by Seller.

8. Default.

(a) Purchaser shall be in default (hereinafter "Default") under this Agreement and Seller may terminate this Agreement and exercise all other remedies in law or in equity if Purchaser: (i) fails to make payment hereunder to Seller when due; or (ii) breaches any other term, provision or condition contained in this Agreement; or (iii) is declared to be in default under any other agreement between Purchaser and Seller, and if in any of the foregoing cases set out in (i), (ii) or (iii), Purchaser fails to cure any said breach or default within ten (10) days following written notice thereof from Seller

(b) Upon the occurrence of a Default, Seller may elect to exercise any one or more of the following options:

- i. Seller may hold the Products until such time as Purchaser has paid the respective purchase price and any expenses (including interest charges and any other costs of collection) incurred by Seller as a consequence of such default;
- ii. Seller may sell the Products to a third party and require Purchaser to reimburse Seller for any losses, or expenses associated therewith;
- iii. Seller may require payment in cash prior to delivery of any Products hereunder;
- iv. Seller may withhold any Products not delivered to Purchaser at the time of the default;
- v. Seller may terminate this Agreement; or
- vi. Seller may exercise all other rights hereunder and may seek all other remedies available to it in law or in equity.

(c) Purchaser agrees that, in the event any legal action should be deemed necessary by Seller to recover any sums due hereunder or under any promissory note, trade acceptance, or invoice, or, if applicable, to recover possession of the Products, as defined hereinabove, or any proceeds from the sales thereof, there shall be added to the sums due from Purchaser to Seller the costs of collection, including reasonable attorney's fees.

(d) When reasonable grounds for insecurity arise with respect to Purchaser's performance, Seller may in writing demand assurance of due performance and until it receives such assurance may suspend any performance for which it has not already received payment.

9. Effects of Termination. If the Agreement is terminated pursuant to Section 8(b)(v), Seller may deliver Products which have been manufactured to Purchaser ("Finished Products"). For each Finished Product, Purchaser shall pay to Seller the price provided for herein plus any adjustment thereto resulting from reduced quantities due to termination. Computer materials which are in the process of being manufactured and items purchased by Seller for manufacture of the Products for Purchaser may at Seller's option be completed at the agreed price or delivered to Purchaser in "as is" condition at the costs incurred by Seller for the purchase of these items.

10. Security Agreement. As security for the full and prompt payment of all amounts now or hereafter owing by Purchaser to Seller, Purchaser grants to Seller a present and continuing first priority, purchase money security interest in all Products purchased by Purchaser from Seller. Purchaser agrees and undertakes to perfect, complete and consummate such security interest for the benefit of Seller as its true and lawful attorney-in-fact to sign, execute and file any and all UCC financing statements, continuation statements and any other documentation as Seller deems necessary to effect, protect and continue Seller's security interest in the Products.

11. Software License.

(a) Seller hereby grants to Purchaser a nonexclusive, non-transferable license to use the object code version of the Software (as defined below) on the Products located at Purchaser's facility (i) solely in connection with operation of the Products and (ii) by persons who are employees of Purchaser. Purchaser may not copy, disclose, modify, reproduce, decompile, reverse engineer or transfer software or documentation

without our prior written consent. Purchaser agrees not to sublicense, rent, lease, sell, permit the use of the Software by any third party, distribute or otherwise transfer the Software or documentation except with our express written consent. Moreover, Purchaser shall not obscure or cover any copyright notice, mask work notice or other proprietary legends placed on or embedded in the software or documentation or otherwise appearing in or on the Products.

(b) Purchaser's rights in the Software will be limited to those expressly granted in this Section 11. Seller reserves all Intellectual Property Rights and any other rights and licenses in and to the Software not expressly granted to Purchaser hereunder. All changes, modifications or improvements made or developed with regard to the Software by Seller, whether or not made or developed at Purchaser's request, shall be and remain the property of Seller. Purchaser acknowledges and agrees that nothing herein gives it any right, title or interest in the Products, Software or documentation except for its limited express rights set forth herein. Additionally, the Purchaser acknowledges and agrees that Seller maintains exclusive ownership of and to all aspects of Product design and in and to the software and documentation, in all forms, all copies thereof, and Intellectual Property Rights associated therewith. Purchaser may be required to enter into a separate license agreement which will supersede this section with regard to the subject of such license agreement.

(c) The Software and documentation is being delivered to you "AS IS" and Seller makes no warranty as to its use or performance. SELLER DOES NOT WARRANT THE PERFORMANCE OR RESULTS THAT YOU MAY OBTAIN BY USING THE SOFTWARE. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED FOR HEREIN, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY TITLE, OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU BEAR ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE SOFTWARE.

(d) The Software license granted herein shall terminate if Purchaser should breach its obligations hereunder in which case Purchaser shall immediately cease using the Software and applicable documentation and certify to Seller in writing that the Software and documentation (including any copies permitted by Seller pursuant to the terms of this Agreement) have been destroyed or returned to Seller. Such termination shall not relieve Purchaser of any of its obligation prior to termination and shall not repair any rights or remedies of Seller accrued prior thereto. "Software" shall mean the software (and its applicable documentation) embedded in the Products delivered to the Purchaser.

12. Tools. Purchaser acknowledges and agrees that Seller maintains exclusive ownership of and to all aspects of the tools manufactured by Seller for the production of the Products for Purchaser even if Purchaser has paid the costs for such tools.

13. Protection of Trade Secrets and Confidential Information.

The parties hereto agree that

(a) Except as provided for in subsection (b) of this Section, Purchaser shall not disclose any Trade Secrets or Confidential Information of the other party to any individual or entity not a party to this Agreement.

(b) Purchaser may make available Trade Secrets or Confidential Information to its qualified employees, as defined hereinafter, to the extent that such information must be disclosed to such qualified employees to apply the Trade Secrets or Confidential Information to its intended use. A "qualified employee" shall mean any individual employed by or affiliated with Purchaser who is bound by a valid and fully enforceable confidentiality agreement which contains confidentiality obligations substantially similar to the confidentiality obligations stated herein, prior to disclosure of the Trade Secrets and Confidential Information to such

employee.

(c) For purposes of this Agreement the following terms shall have the meanings set forth below:

i. The term "Trade Secrets" shall mean and include any and all designs, plans, processes, tools, mechanisms, programs or compounds known to only Seller, or to those of its clients and employees to whom they must be confided in order to be applied to the uses intended, some or all of which may arise to the level of being patentable or subject to copyrights, all as further defined under the laws of the State of South Carolina.

ii. The term "Confidential Information" shall mean and include information not rising to the level of Trade Secret and not generally known to or by a business in competition with the Seller or otherwise publicly disseminated by the protected party hereto, the disclosure of which may be beneficial to a competing business or detrimental to Seller.

14. Intellectual Property Infringement. Seller agrees to defend or settle at Seller's own expense any suit or proceeding brought against Purchaser based upon a claim that the Products infringe any U.S. patent or trademark of a third party, provided, Seller is given prompt written notice of, and full and complete authority, information and assistance in the defense of, such claim, suit or proceeding. Seller shall not be responsible for the cost of any settlement of such claim, suit or proceeding made without the written consent of Seller. In addition, and at the sole option and expense of Seller, Seller may, at any time after any such claim has been asserted, and shall, in the event any Product is held to constitute infringement, either procure for Purchaser the right to continue using that Product, or replace or modify such Product that it becomes non-infringing, provided that such replacement or modified Product has the same functional characteristics as the infringing Product, or, if the prior two remedies are commercially impractical, in Seller's sole opinion, then Seller may take possession of the affected Product and terminate Purchaser's rights and Seller's obligations under this Agreement in respect of such Product, and upon any such termination return to Purchaser a portion of the fees paid for that Product based on a three (3) year straight line depreciation, with depreciation deemed to have commenced on the date thirty (30) days from the F.O.B. shipping date. Seller may engage its own counsel, at its own expense, to advise Purchaser in connection with any such claim, suit or proceeding. Seller shall not be liable to Purchaser under the terms of this Section or otherwise if any infringement or claim is based on: (a) the use of the Products in violation of this Agreement; (b) modifications to the Product that were not performed by Seller or approved by Seller in writing; or (c) the use or integration of the Products in combination with products, software or other technologies not provided by Seller, if the claim would not have arisen but for the particular combination. The foregoing provisions state Seller's sole and exclusive obligations and Purchaser's sole and exclusive remedies with respect to infringement.

15. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be submitted to and be finally resolved by arbitration, to be conducted by the American Arbitration Association ("AAA"), with such arbitration to be held in Atlanta, Georgia in accordance with the AAA's Commercial Arbitration Rules then in effect. Notwithstanding the foregoing, the provisions of this Section will not prevent a party from commencing court proceedings seeking injunctive relief for controversies or claims related to Intellectual Property Rights. Each party hereby irrevocably agrees that service of process, summons, notices, as other communications related to the arbitration procedures shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party, or if actually received by the other party. The arbitration shall be conducted by one arbitrator, with at least five (5) years experience in arbitrating technology-related legal

disputes, selected jointly by the parties, or selected by the American Arbitration Association if the parties fail to agree on an arbitrator within a reasonable period. There will be no discovery of documents under the arbitration procedure. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator.

16. Miscellaneous.

(a) Purchaser may not assign this contract without the express prior written consent of Seller.

(b) Purchaser may not set off any amounts due to Seller under another agreement with Seller against any amount due to Seller under this Agreement.

(b) Except as otherwise expressly provided in Section 1(c) hereof or in a written document, signed by Seller and Purchaser, this document and attachments and exhibits thereto constitute the entire agreement between Seller and Purchaser with respect to the subject matter herein contained and all prior agreements and communications between Seller and Purchaser, whether oral or written, are superseded by this Agreement.

(c) No modification, limitation, waiver or discharge of this Agreement or of any of its terms shall bind Seller unless in writing and signed by a duly authorized employee of Seller. The failure of Seller to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(d) All notices required hereunder shall be in writing and sent by first class mail or by telefax or written confirmation to such addresses as stated on the reverse side hereof.

(e) This Agreement shall be governed by, and construed, interpreted and enforced under the laws of the State of Georgia without giving effect to the conflict of laws principles.

(f) In connection with any litigation, including appellate proceedings, arising out of or pertaining to any of the contractual relationships between Seller and Purchaser or the breach thereof, as contemplated herein, all costs and expenses, including reasonable attorneys fees, shall be borne by the losing party or, as the case may be, shall be prorated to properly reflect any partial losing or prevailing of the parties to such litigation.

(g) In case any conditions of this Agreement should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of this Agreement shall not be affected thereby.

(h) The following terms and provisions shall survive any termination of this Agreement: Section 4(e), Section 7, Section 11(c), Section 11(d), Section 13, 14, 15 and 16.