

# VERICOM GLOBAL SOLUTIONS , INC.

## TERMS AND CONDITIONS OF PURCHASE AND SALE

1. **General.** These terms apply to all products (Products) sold by "Vericom Global Solutions, Inc." (VERICOM) and they represent the sole understanding between VERICOM and the BUYER listed on the front side of this invoice for payment (BUYER) with respect to the purchase of Products. BUYER's purchase order is solely for the purpose of requesting specific Products, delivery dates, quantities and shipping destinations. Any provision of BUYER's purchase order (or other documents and communications) which is in any way inconsistent with or in addition to these terms shall not be binding on VERICOM and are hereby rejected by VERICOM.
2. **Price.** Prices published by VERICOM may be changed at any time without notice. All prices are exclusive of transportation, insurance costs, all taxes including use, sales, property and any similar taxes, and any fee or duty access upon exportation or importation of any Product. BUYER agrees to pay such taxes unless otherwise mutually agreed in writing with VERICOM.
3. **Invoice and Payment.** VERICOM will invoice BUYER on the date the Product is tendered to the carrier at VERICOM's facility. All invoices will be due and payable in full in U.S. dollars consistent with the terms contained within VERICOM's invoice. If payment is not received in a timely manner, a service charge of one percent (1%) per month or the maximum rate permitted by law, whichever is less, shall be assessed on overdue payments. If, in VERICOM's judgment, BUYER's financial condition does not justify continuation of shipment on the original terms of payment, VERICOM may change the payment terms or may require full or partial payment in advance. If BUYER refuses to accept such change in credit terms, BUYER's order may, at VERICOM's option, be canceled without liability to VERICOM. Further, on delinquent accounts, VERICOM shall not be obligated to continue performance under any agreement with BUYER. BUYER warrants to VERICOM that, upon each date BUYER orders Products, BUYER is financially solvent. In the event (i) of BUYER's bankruptcy or insolvency, (ii) that any proceeding is brought or threatened against BUYER or brought by BUYER under any bankruptcy or insolvency laws or their equivalent or (iii) that BUYER commences to be wound up or suffers a receiver to be appointed, VERICOM may cancel any order then outstanding without liability to VERICOM and VERICOM shall receive reimbursement from BUYER for costs incurred, including but not limited to attorneys' fees, lost profit for Products so cancelled, and all other costs associated with the cancellation, direct and indirect, including without limitation costs for work in process or custom goods.
4. **Security Interest.** VERICOM hereby reserves a purchase money security interest in the Products sold and the proceeds thereof, in the amount of the Products' total purchase price. In the event of default by BUYER of any of its obligations to VERICOM, VERICOM shall have the right to repossess the Products sold herein without liability to BUYER. This security interest will be satisfied by payment in full from BUYER to VERICOM. BUYER agrees to execute any document requested by VERICOM to perfect the foregoing security interest.
5. **Special Orders.** Special order Products will be so stated in written proposal(s) from VERICOM to BUYER. Product(s) sold as special orders are non-cancellable. All Products packaged in BUYER's packaging, containing the BUYERS name, logo, part number, address or any reference or information specific to the BUYER are classified special order.
6. **Cancellation: Restocking Fee.** BUYERs may cancel BUYER's order provided written notice is received by VERICOM at least sixty (60) days in advance of a scheduled delivery. If BUYER cancels any order or part thereof within such sixty (60) day period, BUYER agrees to pay to VERICOM a restocking fee equal to fifteen percent (15%) of the value of the canceled items on the BUYER's purchase order. BUYER agrees to pay such amount within five (5) days of the date of VERICOM's invoice. Special orders are always non-cancellable.
7. **F.O.B.** All sales are made F.O.B. VERICOM's facility title and risk of loss shall pass to BUYER upon tender by VERICOM of the Product to the carrier at VERICOM's shipping point. All claims for damages must be filed directly with the carrier. The planned shipment date is an estimate only, and VERICOM will not be subject to liability for failure to ship on or before such date under any circumstances. Any carrier selected by VERICOM shall not be deemed an agent of VERICOM.
8. **Force Majeure.** VERICOM shall not be liable for nonperformance or delays, under any circumstances, which occur due to any causes beyond its reasonable control. In no event shall VERICOM be liable for any delay or re-procurement costs for failure to meet any shipment date. In the case of Product shortages, VERICOM reserves the right to allocate Products in a fair and equitable manner among all of its customers.
9. **Acceptance.** BUYER shall give written notice to VERICOM of (i) discrepancies between the type and quantity of Product ordered and Product delivered or (ii) Product defects, within five (5) days after delivery of the Product to BUYER. Lacking such notice, the BUYER shall be deemed to have accepted the Product as delivered. No credit allowances for defective Products will be made or replacements therefore shipped until it is established to VERICOM's satisfaction after suitable testing and inspection that the Product was defective on the delivery date. VERICOM reserves the right to make partial shipments, and invoices will be issued accordingly. BUYER may not reject a delivery by reason of partial shipment. If BUYER rejects a Product, VERICOM will repair or replace the Product or refund to BUYER any amounts paid by BUYER for the Product, such refund to be given upon receipt by VERICOM of the rejected Product. The foregoing shall be BUYER's sole and exclusive remedy for Products rejected by BUYER.
10. **No Licenses Granted.** The sale of Products by VERICOM does not convey any license, expressly or by implication, estoppels or otherwise, under any VERICOM patent, copyright, trademark, or other intellectual property right. VERICOM expressly reserves all its rights under such intellectual property rights.
11. **Limitation of Liability.** VERICOM's sole liability to BUYER and BUYER's sole and exclusive remedy hereunder for all claims shall be limited to a refund or credit to BUYER of the purchase price, or to the repair or replacement of the Product, at VERICOM's option. In no event shall VERICOM be liable for BUYER's costs of procurement of substitute Products or BUYER's inability to obtain substitute Products. IN NO EVENT SHALL VERICOM BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION LOST PROFITS, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE EVEN IF VERICOM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OR ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.
12. **Indemnification by BUYER.** BUYER shall defend, indemnify and hold harmless VERICOM, its directors, officers, employees and agents from and against any claims, demands, cause of action, liabilities, or expenses (including attorneys' fees and costs) for any personal or bodily injury, illness or death or property damage or any other claims, demands, allegations, damages, costs or liabilities arising out of or resulting in any way from BUYER's misuse or mishandling of the Products.
13. **Indemnification by VERICOM.** VERICOM agrees at its own expense, to defend BUYER with respect to all suits instituted against BUYER to the extent based on a third party claim that a Product manufactured by VERICOM infringes a U.S. patent issued prior to the date of sale, U.S. copyright or U.S. trademark, and will pay all damages awarded against BUYER, or settlements entered into by VERICOM, in connection therewith, provided, however, that BUYER (i) gives immediate written notice to VERICOM of the institution of any such suit, (ii) permits VERICOM complete discretion in the conduct, defense, control, and settlement of the same, and (iii) gives VERICOM all needed information, assistance, and authority to enable VERICOM to do so. VERICOM will not be responsible for defending any claim or to pay any award or damages assessed against BUYER based upon or alleging the making, use, or sale of Products in combination with other Products, equipment or materials not furnished by VERICOM or based upon the making, use, or sale of Products which are modified other than by VERICOM. In the event Products manufactured by VERICOM infringe, or in the opinion of VERICOM might constitute an infringement of, a U.S. patent issued prior to the date of sale, U.S. copyright or U.S. trademark, VERICOM may, if VERICOM so elects and if such a result is possible, either (i) secure for BUYER the right to continuing using the Products by procuring for the BUYER a license, or by some other means, (ii) at VERICOM's own expense, replace the Product with non-infringing Products, or (iii) remove the enjoined Products and refund the sums paid therefore, less a reasonable sum for depreciation and use. The foregoing provisions, however, will not obligate VERICOM in any way under this Section 13 with respect to any equipment, devices, parts or goods which is specially manufactured by VERICOM based upon, and in accordance with, designs, specifications or processes supplied by BUYER. THIS SECTION 13 STATES BUYER'S SOLE AND EXCLUSIVE REMEDY AND VERICOM'S ENTIRE LIABILITY AND OBLIGATION (EXPRESS, STATUTORY, IMPLIED OR OTHERWISE) WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR CLAIMS THEREOF.
14. **Limited Warranty.** VERICOM warrants to BUYER that the Product will be free from defects in material and workmanship and will perform substantially in accordance with VERICOM's applicable specification for VERICOM's specified standard warranty period or if no such warranty period is stated for ninety (90) days after delivery. In the event of a breach of the foregoing warranty, VERICOM, in its sole discretion, shall repair or replace the defective Product or refund the purchase price therefore provided that the non-conforming Product is (i) returned during the warranty period and (ii) properly packaged and shipped, at BUYER's expense, to VERICOM's designated repair facility, in accordance with VERICOM's Return Material Authorization Policy. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. Products which have been improperly handled or shipped, or which have been subject to abuse, misuse, accident, alteration, neglect, improper or inadequate maintenance, unauthorized repair, or improper installation are not covered by warranty. No warranty is made with respect to custom equipment or Products produced to BUYER's custom specification unless VERICOM explicitly states the terms of such a warranty in writing in the contract for such custom Products under a heading expressly referencing the term "Warranty". BUYER acknowledges that BUYER has selected on its own the Products as suitable for BUYER's intended purpose and that VERICOM makes no warranty with respect to such suitability for fitness of the Product for such purposes.
15. **Warranty Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY PROVIDED HEREIN, ALL PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY. VERICOM SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING DESIGN WARRANTIES, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT. BUYER SHALL HAVE NO RIGHT TO MAKE OR PASS ON ANY WARRANTY ON BEHALF OF VERICOM TO ANY THIRD PARTY.
16. **Miscellaneous.** The validity, performance, and construction of these terms shall be governed by the laws of the United States of America and the State of Tennessee as applied to transactions taking place within the United States of America. The U.N. Convention on contracts for the International Sale of Goods is specifically excluded from application. BUYER agrees to comply strictly and fully with all export controls imposed by any jurisdiction. In the event of litigation to enforce any rights hereunder, the parties will voluntarily appear before and hereby consent and submit to the jurisdiction of the courts of the United States of America/United States District Court for the Eastern District of Tennessee and the State Courts of Tennessee and each party hereby waives any venue objections to such courts. If BUYER is located in the United States, such jurisdiction and venue shall be exclusive. The prevailing party in any such litigation or related settlement negotiations shall be entitled to recover reasonable attorneys' fees and expenses. BUYER may not assign this agreement or any interest or right herein without VERICOM's prior written consent. Any assignment without such consent shall be null and void. These terms may be amended or supplemented only by a writing that is signed by the authorized representatives of both parties. No term or provision of these terms will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. If any part of these terms is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of these terms will remain in full force. BUYER hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity except for such warranties or representations as are specifically set forth herein. These terms shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing without VERICOM's written consent. No representation, promise or condition not expressly provided in writing and signed by authorized representatives of BUYER and VERICOM shall be binding on either party.