



## **STANDARD TERMS AND CONDITIONS OF SALE**

### **1. GENERAL**

These Standard Terms and Conditions of Sale Acknowledgment (collectively hereinafter "Terms and Conditions") shall govern all sales by Genesis Technology USA, Inc. ("Genesis") to Buyer. These Terms and Conditions shall be construed as an offer or counteroffer and shall not be construed as an acceptance of Buyer's Purchase Order. After the last Sales Order Acknowledgment is submitted by Genesis to Buyer, no modification or addition thereto shall be binding on either party unless it is in writing and signed by both parties. Products ("Products") shall mean any of the Product Types listed in Section 7(c) below.

### **2. TERMS OF PAYMENT**

All Products sold to Buyer will be invoiced upon shipment by Genesis. Terms of payment shall be net thirty (30) days from date of invoice, subject to the approval of the Genesis Credit Department. Genesis reserves the right to modify credit terms. Genesis reserves the right to charge interest from the date payment is due, at the maximum legal rate on all delinquent accounts.

### **3. TAXES AND DUTIES**

Buyer shall provide to Genesis any applicable correctly completed tax exemption certificate(s). In any event, Buyer shall be fully responsible for, pay to Genesis, in addition to the prices provided for herein, any foreign or domestic duty, sales or use tax, transfer tax, excise tax or similar charge (exclusive of taxes based on net income or net worth) which Genesis may be required to pay or otherwise arise with respect to the production, manufacture, sale, transportation, storage, delivery or use of Products sold hereunder.

### **4. SHIPMENT AND DELIVERY**

- (A) Genesis shall use the freight term for Products as agreed with Buyer and shall be indicated on the sales order acknowledgment. Title transfer/Risk of loss to Buyer and payment responsibility shall be as follows:

<u>Incoterms</u>	<u>Title Transfer/Risk of Loss</u>	<u>Freight Payment Responsibility</u>
<b>EXW</b> — Ex Works (named place)	At the time shipment is picked up from Genesis' factory, warehouse or other facility.	Buyer
<b>FCA</b> — Free Carrier (named place)	At the time shipment is unloaded from truck at the origin's port	Genesis pays freight to exporter's port. Genesis hands over the goods, cleared for export, into the custody of the first carrier (named by the buyer) at the named place.
<b>FOB</b> — Free on Board (named loading port) <i>Maritime transport only.</i>	Genesis must load the goods on board the ship nominated by the buyer, cost and risk being divided at ship's rail.	Genesis must clear the goods for export.
<b>DDU</b> — Delivered Duty Unpaid (named destination place)	At the time shipment is delivered to final destination.	Genesis pays freight to final destination, duty is unpaid
<b>DDP</b> — Delivered Duty Paid (named destination place)	Genesis pays for all transportation costs and bears all risk until the goods have been delivered.	Genesis pays freight to final destination, duty is paid
FOB, Atlanta	At the time goods are shipped from Atlanta, Georgia	Buyer pays freight only from Atlanta, Georgia to final US destination

- (B) All shipments with the incoterm EXW, sometimes called “Ex-Factory”, shall be picked up from Genesis’s designated factory, warehouse or other facility by Buyer’s carrier or freight forwarder. Such carrier or freight forwarder must be approved by Genesis in advance, which approval shall not be unreasonably withheld or delayed. Title and risk of loss shall transfer to Buyer when shipment is picked up by Buyer’s carrier or freight forwarder.
- (C) Genesis will propose applicable freight surcharge rate to the customer. Genesis should be notified in writing regarding the agreement to the rate proposed, date of implementation and billing schedule. Changes to the Buyer's freight terms will be in effect five (5) working days after the date of the customer's written approval.
- (D) Each shipment made hereunder shall be considered a separate transaction. In the event of default by Buyer, Genesis may decline to make further shipments, in its sole discretion. If Genesis elects to continue to make shipments, such actions shall not constitute a waiver of any default by Buyer or any provision of these Terms and Conditions.
- (E) Genesis shall use reasonable commercial efforts to make shipments in accordance with the delivery dates noted in Genesis’s sales order acknowledgment.
- (F) Buyer shall indemnify and defend Genesis against any and all claims or losses to Genesis resulting from the negligent or other unlawful acts of a carrier or freight forwarder selected by Buyer.

- (G) Genesis shall not be liable or responsible for any delays, damages or losses relating to any shipment arising from or due to the fault of carrier or freight forwarder, whether selected by Genesis or not.
- (H) PARTIAL SHIPMENTS FOR DELIVERY PRIOR TO THE ORIGINAL SCHEDULED DELIVERY DATE REQUESTED BY BUYER SHALL SHIP FOB EX-FACTORY, UNLESS DELAY TO ORIGINAL SCHEDULED DELIVERY DATE IS DUE TO Genesis.

## **5. SECURITY INTEREST**

Genesis hereby reserves a purchase money security interest in the goods sold hereunder and all the proceeds thereof, including, but not limited to, insurance proceeds to secure performance of all Buyer's payment obligations under this Agreement. Buyer's failure to pay any amount when due shall give the Genesis the right to repossess and remove the goods, provided that such repossession and removal shall not be made from any customer of Buyer's except upon ten (10) days prior notice to Buyer. Such repossession and removal shall be without prejudice to any of Genesis's other remedies at law or in equity. Buyer agrees, without further consideration, at any time to do or cause to be done, to execute and to deliver all such further acts and instruments as Genesis may reasonably request in order to perfect Genesis's security interest in the goods, including without limitation, a financing statement appropriate for filing. If Buyer, for whatever reason, fails to sign a financing statement after Genesis has reasonably requested that Buyer sign such a financing statement, Buyer agrees that Genesis shall have the authority as Buyer's attorney-in-fact to sign the financing statement as Buyer's agent.

## **6. INSPECTION AND ACCEPTANCE**

The performance of the Product shall be in accordance with the Genesis Product Specification referenced on the front hereof. Any claim for Products not conforming to the Product Specifications must be made in writing using Genesis's standard Customer Failure Analysis system. Genesis has the right to examine at Buyer's premises, any products the Buyer claims are nonconforming. If shipments returned to Genesis are found to be within the Acknowledgement Quality level, Genesis has the right to impose a reasonable re-screening charge.. Repairs that are Genesis's responsibility may be made, at Genesis's election, at Buyer's premises.

## **7. LIMITED WARRANTY**

- (A) Hardware: Genesis warrants for the applicable period as set forth in subsection (C) that Products will be free from defects in workmanship or material under normal use and service. Genesis' obligation under this warranty shall not arise until Buyer returns the defective product, freight prepaid to Genesis's facility. Genesis' sole obligation under this warranty shall be, at its option, to replace or repair, without charge, any defective Product or component part of such Products.

(B) Effective period of warranty:

<u>PRODUCT TYPE</u>		<u>FROM DATE OF SHIPMENT</u>
Cables	)	
Connectors	)	90 Days
RF Shield Can Assembly	)	
Electronic Enclosures	)	

Any replacement of Products, or components thereof, under this warranty shall not extend the period of the warranty which was applicable at the initial sale of the Product.

Genesis shall not be liable under this warranty if (i) the Products which Buyer alleges are defective have been repaired or altered by anyone other than Genesis's designated personnel or authorized representative unless such repair or alteration was effected pursuant to the prior written approval of Genesis or (ii) testing and examination by Genesis reveals the alleged defect to have been caused by Buyer's misuse, neglect, improper installation or any other cause beyond the range of intended use of the Products or by accident, fire or other hazard.

## 8. LIMITATIONS AND DAMAGES DISCLAIMER

(A) **General Limitations.** IN NO EVENT SHALL GENESIS BE LIABLE FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS CONTRACT OR THE USE OF THE GOODS PROVIDED HEREUNDER, REGARDLESS OF WHETHER TI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, ANCILLARY COSTS TO THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, RETESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST GENESIS MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED.

(B) **Specific Limitations.** IN NO EVENT SHALL GENESIS' AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY USE OF ANY GENESIS PRODUCT PROVIDED HEREUNDER, EXCEED THE TOTAL AMOUNT PAID TO GENESIS FOR THE PARTICULAR UNITS SOLD UNDER THIS CONTRACT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR UNITS SOLD TO BUYER UNDER THIS CONTRACT SHALL NOT ENLARGE OR EXTEND THIS LIMIT.

(C) BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS CONTRACT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS CONTRACT WOULD BE SUBSTANTIALLY DIFFERENT.

## 9. PATENT INFRINGEMENT INDEMNIFICATION

- (A) Genesis agrees, at its own expense, to defend Buyer and any customer thereof ("indemnitee") from and against any claim, suit or proceeding, and to pay all judgments and costs finally awarded against Buyer or said customer by reason of claim, suit or proceeding insofar as it is based upon an allegation that the Products or any part thereof furnished by Genesis infringe any letter patent, if Genesis is notified properly of such claim in writing and is given authority and full and proper information and assistance (at Genesis's expense) for defense of the same. In case such Products, or any part thereof, are held in such suit to constitute infringement and the use of Products or any part is enjoined, Genesis shall at its sole discretion and at its own expense perform for indemnitee one of the following options: (1) procure for the indemnitee the right to continue using the Products or part; (2) replace or modify the same so that it becomes noninfringing; or (3) remove such Products or part thereof and grant indemnitee a credit for the depreciated value of the same.
- (B) The indemnitee shall have the right to employ separate counsel in any claim, suit or proceeding set forth in paragraph (A) and to participate in the defense thereof, but the fees and expenses of the indemnitee's counsel shall not be borne by Genesis unless: (1) Genesis specifically so agrees; or (2) Genesis, after notice and without cause does not assume such defense. Genesis shall not be liable to indemnify indemnitee for any settlement that is effected without Genesis's consent, which consent shall not be unreasonably withheld.
- (C) The indemnification set forth in subsection 9(A) shall not apply and Buyer shall indemnify Genesis and hold it harmless from all liability or expense (including costs of suit and attorney's fees) if the infringement arises from, or is based upon, Genesis's compliance with particular requirements of Buyer or Buyer's customer that differ from Genesis's standard specifications for the Products; modifications or alterations of the Products; or a combination of the Products with other items not furnished or manufactured by Genesis.
- (D) GENESIS SHALL NOT BE LIABLE TO BUYER, TO BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, AND BUYER AGREES TO INDEMNIFY GENESIS WITH RESPECT TO ANY CLAIM FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT, AND LOSS OF PLANT, EQUIPMENT OR PRODUCTION ARISING FROM ANY CLAIM OF INFRINGEMENT.
- (E) The foregoing states the entire liability of Genesis for patent infringement.

## 10. FORCE MAJEURE

Neither party to this Agreement shall be responsible or liable to the other party, to any third party for any damages including, without limitation, incidental and consequential damages, arising out of, nonperformance or delay in performance of the terms and conditions herein due to acts of God, wars, riots, strikes, unavailability of suitable and sufficient labor, materials, die or capacity or technical or yield failures and except as provided in section 4(C) above, any unforeseen event-beyond its control.

If any such events occur, Genesis may, in its sole discretion, allocate production and deliveries among any and all of its customers and for its own requirements for further manufacture and other use.

## 11. PROPRIETARY RIGHTS

Buyer agrees that Genesis retains proprietary rights in and to all Product specifications, designs and engineering details for Products, to all Genesis designed Software and Firmware, to all manuals marked as proprietary, to all discoveries, inventions, patent and other proprietary rights arising out of work done in connection with any contract between Buyer and Genesis, and to all other information or assistance of a technical nature provided to Buyer by Genesis that is not so provided for reproduction or delivery to Buyer's customers. Buyer warrant that it will not disclose in any manner to any third person information to which Genesis retains proprietary rights therein.

## 12. CANCELLATION, RESCHEDULE AND FAILURE TO RELEASE

- (A) **No Cancellation** (“NC”) and/or **No Rescheduling** (“NR”) of product by Buyer within thirty (30) days of Genesis’ estimated shipping date for such product will be accepted. Any cancellation or rescheduling of product by Buyer more than thirty (30), but less than ninety (90), days before Genesis’ estimated shipping date for such product may result in a charge to Buyer. Such charge, if any, shall be reasonably determined by Genesis based on factors such as whether the product was manufactured specifically for Buyer, Genesis’ ability to change its production schedule within the period of notice provided by Buyer, whether Genesis acquired or allocated particular supplies or equipment to meet Buyer's order and such other factors as reasonably determined by Genesis. Orders may be cancelled or rescheduled by Buyer more than ninety (90) days before Genesis’ estimated shipping date for such product at Buyer's discretion and without charge.
- (B) If Buyer cancels shipment of any purchase order, or a portion of any purchase order, or reschedules without prior agreement by Genesis any purchase order, or a portion of any purchase order, the following charges may, at Genesis option, be assessed and invoiced by Genesis.

<b><u>Product Type</u></b>	<b><u>Notice Received Prior to Schedule Date:</u></b>	<b><u>Cancellation/Reschedule Charges:</u></b>
Standard Products	0 - 30 days	No cancellations allowed
Standard Products	31 – 90 days	Charges may apply
Build to Print Products	NC/NR	No cancellations allowed 100% invoiced
Last Time Buy (LTB Product)	NC/NR	No cancellations allowed 100% invoiced

- (C) Genesis price quotations and acknowledgments are dependent upon quantity and schedule. If Buyer does not release the full quantity quoted and acknowledged within the time frame stated on the quotation, Genesis reserves the right, at Genesis's sole discretion, to either invoice the full quantity quoted and acknowledged within the time frame stated on the quotation or to invoice for a higher price in accord with Genesis's price schedule for the lower quantity actually released by Buyer.

### **13. REMEDIES AND DAMAGES**

- (A) If Buyer rightfully and timely rejects or justifiably revokes acceptance of items or if Buyer has accepted nonconforming items and has timely notified Genesis of a breach of warranty, Buyer's sole and exclusive remedy will be for Genesis (at Genesis's option) to repair, replace or credit Buyer/Buyer's-account with respect to any nonconforming goods returned to Genesis during the applicable warranty or inspection period set forth above and with respect to any nonconforming services on the condition that (i) Genesis is promptly, upon Buyer's discovery of the nonconformity, notified in writing with a detailed explanation, (ii) Genesis issues a Return Material Authorization ("RMA") number for return of goods F.O.B. Genesis's designated plant and (iii) Genesis's examination discloses that such items are nonconforming. Such RMA shall be effective for forty-five (45) days from issuance date.
- (B) Genesis has the right to terminate this Agreement if in Genesis's sole judgment Buyer's financial condition does not justify the terms of payment applicable from time to time and upon demand, Buyer does not immediately comply with any modification of payment terms required by Genesis in accordance with paragraph 2.

### **14. EXPORT OR REEXPORT REQUIREMENTS**

Buyer and Genesis shall comply with all export/import laws of the United States and the applicable laws of any other country, including the People's Republic of China. Export directly or indirectly of these Products, or goods containing these Products to any other country may be prohibited unless Buyer obtains prior export or re-export authorization from the United States Government or other applicable government. Buyer shall hold Genesis harmless and indemnify it for any and all fines, penalties or other liability, (including attorney's fees) that result from Buyer's failure to comply with any such applicable laws.

### **15. GENERAL**

- (A) This Agreement and the Sales Order Acknowledgement constitute the entire agreement between the parties and supersedes all prior agreements and understandings between them relating to the subject matter hereunder and no modification of this Agreement shall be binding on either party unless it is in writing and signed by both parties.
- (B) No waiver of any provision of this Agreement shall be effective unless made in writing.

- (C) Buyer and Genesis agree that this Agreement is made and entered into in, and shall be governed by the laws of, the State of Georgia. Buyer and Genesis consent to jurisdiction of any state or federal court in Fulton County, Georgia to resolve any claim or controversy arising from or in any manner related to the transaction documented in this Agreement.
- (D) Section headings are for convenience only and shall not be considered in the interpretation of this Agreement.
- (E) The plural shall include the singular, and the singular shall include the plural whenever used.
- (F) The provisions of this Agreement are severable and if any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding on and be enforceable by and between the parties.
- (G) The prevailing party in any legal action brought by one party against the other shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees.
- (H) All notices required or permitted hereunder shall be in writing and shall be personally delivered or dispatched by, prepaid first-class airmail or by fax and sent to the address indicated. This Agreement may not be terminated by Buyer without Genesis's prior written consent. If Genesis so consents to such termination, Buyer shall be liable for termination charges, including without limitation, a price adjustment based on the quality of products actually delivered and all costs direct and indirect, incurred and committed for this Agreement together with reasonable allowance for prorated expenses and anticipated profits.
- (I) An action for breach of contract for sale or any other legal or equitable cause of action arising from or in any manner related to the order specified in the Quotation or Sales Order Acknowledgment must be commenced within one (1) year after the cause of action has occurred, or said cause of action will be agreed by the parties to have been waived.