

Cybernet Systems Corporation
Terms and Conditions of Sale

1. DEFINITIONS

"Cybernet" means the company or companies identified as Cybernet Systems or Cybernet Medical in your invoice or any other Cybernet affiliate, as the context requires. "Customer" means the legal entity accepting Cybernet's written or oral quotation for the supply of Products or Services or whose order for Products or Services is accepted by Cybernet or the party otherwise commissioning the Services in each case as named on the Invoice. "Maintained Products" means hardware, software or peripheral products in respect of which Services are either bundled with the Products or required under a Service Offering selected and ordered by the Customer, accepted by Cybernet and specified on the Invoice, and such additions or changes thereto as may from time to time be agreed in writing between the parties. "Invoice" means the document sent by Cybernet to the Customer, demanding payment for the Products or the Services and containing, recording and evidencing contractual terms relating to the Agreement. "Service Offering (s)" means the service options offered by Cybernet for Maintained Products, as published in Cybernet's literature. "Services" means the services to be performed by Cybernet pursuant to the Service Offering selected by the Customer. "Price" means the charge for the Products or Services. "Products" means goods sold by Cybernet pursuant to the Agreement, as specified on the Invoice. "Agreement" means a contract for the supply by Cybernet to the Customer of the Products and/or the Services incorporating these terms and conditions and the terms of any Service Offerings selected by the Customer. "Third Party Products" means Products not manufactured or assembled or authored by Cybernet and supplied to Cybernet by third parties for re-supply by Cybernet.

2. PRODUCTS AND SERVICES

- a) Cybernet shall supply and the Customer shall purchase, the Products and/or the Services as principals only, to the intent and with the effect that the customer shall not have any rights or obligations, or be entitled to sue, under the Agreement.
- b) The Products and Services are supplied subject to the terms and conditions of this Agreement to the exclusion of any other terms or conditions of the Customer and variations or amendments must be confirmed by Cybernet in writing.
- c) The supply of Services will start on the agreed date as shown on Cybernet's Invoice.

3. DELIVERY, TITLE AND RISK

- a) The Products are delivered to Customer's manufacturing facility or other agreed delivery point.
- b) Manufacturing requirements may cause Products to be delivered by installments. Delivery dates are approximate.
- c) Risk passes FOB origin. Title to Products passes to Customer when full payment is made and Cybernet shall be entitled at any time before title passes (without any liability):
 - I. to terminate Customer's right to use, sell or otherwise deal in Products;
 - II. to enter the premises of Customer and re-possess Products;
 - III. to use or sell Products.

4. ACCEPTANCE OF PRODUCTS

Unless Customer shall, promptly after delivery, inspect the Products and notify Cybernet, in writing, of any defects found, the Products shall be deemed to have been accepted on delivery.

5. THE SERVICE OFFERINGS

- a) Services are provided in accordance with the provisions contained in the Service Offering selected by the Customer, as shown on the Invoice.
- b) Cybernet will use reasonable endeavors to meet relevant response times.
- c) Customer agrees that Cybernet shall not be liable for any direct, indirect or consequential losses occurring as a result of Cybernet's failure to meet relevant response times except as set out in Clause 11.
- d) The Customer may purchase extended service coverage in accordance with then current Cybernet policy.

6. EXCEPTIONS

- a) Cybernet shall be under no obligation to supply the Services where, in Cybernet's reasonable opinion, they are needed because of improper or inadequate installation, use or maintenance; actions or modifications by unauthorized third parties or the Customer; or accidental or willful damage.
- b) The Services do not include the correction or avoidance of software or hardware defects that result from Customer modification of Products. This includes errors or the loading or re-loading of Customer's applications software or data or any reconfiguration onto the Products or Maintained Products.

7. REPLACEMENT

Cybernet reserves the right to replace the whole or any part of the Maintained Products. Repairs may be carried out using reconditioned parts or products that, whilst not necessarily identical to the faulty Maintained Products, are equivalent to new in functionality and appearance.

8. CUSTOMER'S OBLIGATIONS

- a) Customer shall properly use the Maintained Products and shall provide Cybernet with all reasonable facilities and information to enable Cybernet to perform its duties.
- b) Customer shall be responsible for complying with all Customer applicable regulatory requirements.

9. ORDERS, PRICE AND PAYMENT

- a) Orders are not binding on Cybernet until accepted by Cybernet in writing.
- b) Payment shall be net 30 days upon credit approval or as stated on the quotation.
- c) The Price of the Products and/or Services shall be Cybernet's quoted price or, where no Price has been quoted (or a quoted Price is no longer valid), the price listed in Cybernet's published price list current at the date of the Customer's order and in any case as shown on the Invoice.
- d) All Prices quoted in writing are valid for 30 days except written quotations in respect of Third Party Products that are valid for 10 days only. Oral quotations are valid only to the end of the business day upon which they are given.
- e) All Prices for the sale of Products exclude Cybernet's charges for transport and insurance.
- f) The Price and any additional charges payable under the Agreement are exclusive of all sales taxes including Value Added Taxes.
- g) Time for payment is of the essence. Cybernet reserves the right to charge interest on sums more than 7 days overdue on a day to day basis before or after any judgment, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at the rate of 2% above prime, compounded quarterly. Such interest shall be paid on demand. If overdue payments require legal or collection expenses, these legal or collection expenses will be added to the payment due.
- h) At the discretion of Cybernet, or on orders for customized products, up to a 30% prepayment may be requested with the purchase order.

10. WARRANTY

- a) Cybernet manufactures its hardware Products from parts and components that are new or equivalent to new in accordance with industry standard practices and Cybernet warrants that the Products (excluding Third Party Products and software) will be free from defects in materials, workmanship and design for a period of 12 months from the date of purchase and that spare parts used in repairing Maintained Products under any Service Offering will be free from defects in materials, workmanship and design for a period of 90 days from installation in the Maintained Products or the remainder of the Warranty Period or Service Offering appropriate to or purchased by the Customer in respect of the Maintained Products, whichever is the longer.

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- b) There are no warranties for Services.
- c) In respect of Third Party Products, the Customer shall only be entitled to the benefit of any warranty or guarantee given by the Third Party manufacturer.
- d) If, before the expiration of the warranty period or appropriate Service Offering, Cybernet receives written notice from the Customer of any breach of the warranty then Cybernet shall, within a reasonable time, repair or, at its option, replace Products or spare parts that are defective or otherwise remedy such defects. Cybernet must issue an approved returned material authorization number prior to shipment.
- e) This warranty does not apply to defects resulting from improper or inadequate installation, use or maintenance; actions or modifications by unauthorized third parties or the Customer or accidental or willful damage or abuse.
- f) Cybernet disclaims all other warranties, expressed or implied, including without limitation implied warranties of merchantability and fitness for a particular purpose. Cybernet does not give any warranty that the Products are fit for any particular purpose and this warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.
- g) All returns for reasons other than warranty are totally at the discretion of Cybernet and must be approved in advance by Cybernet. Cybernet must issue an approved returned material authorization number prior to return shipment. Unless otherwise specified in writing, all non warranty returns will be subject to a 30% restocking fee and expenses for shipment will be paid by the customer.

11. LIABILITY

- a) Cybernet does not accept liability beyond the remedies set forth herein, including liability for Products not being available for use or for lost or corrupted data or software, or the provision of services and support Cybernet will not be liable for lost profits, loss of business or other consequential, special, indirect or punitive damages, or any claim by any third party except as expressly provided herein. This limitation of liability applies to both Products and Services and Support Customer purchases under this agreement. The Customer agrees that for any liability related to the purchase of Products or Services bundled with Products, Cybernet is not liable or responsible for any amount of damages above the aggregate dollar amount paid by the Customer for the purchase of Products under this agreement. The Customer agrees that for any liability related to purchase of Services Cybernet is not liable or responsible for any amount of damages above the amount paid by the Customer for the Services under this agreement.

12. FORCE MAJEURE

Neither party shall be liable for any delay in performance caused by circumstances beyond its reasonable control and the party in delay shall be entitled to a reasonable extension of time for performance.

13. INTELLECTUAL PROPERTY RIGHTS

Each party will indemnify the other against all costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use or possession of the Products or Third Party Products or products supplied by the Customer for integration purposes (whether used separately or in combination) infringes the intellectual property rights (including without limitation any patent, copyright, registered design, design right or trade mark) of any third party.

14. CONFIDENTIALITY

Each party shall treat as it does its own trade secret information; all information obtained from the other pursuant to the Agreement, which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.

15. EXPORT CONTROL

The Customer acknowledges that the Products licensed or sold hereunder are subject to the export control laws and regulations of the USA. The Customer confirms that with respect to the Products, it will not export or re-export them, directly or indirectly either to any countries that are subject to USA export restrictions or to any end user who has been prohibited from participating in USA export transactions by any federal agency of the US Government.

16. TERMINATION

The Agreement may be terminated forthwith by written notice from either party if:

- a) The other commits any material breach of any of the terms of the Agreement and, if capable of remedy, shall have failed within 30 days after the receipt of a request in writing from the other party so to:
 - remedy the breach (such notice to detail the breach and to contain a warning of such party's intention to terminate);
 - or the other becomes insolvent or bankrupt or is otherwise unable to pay its debts as they fall due.
- b) The Agreement may be terminated forthwith by written notice from Cybernet if:
 - Customer fails to pay any sum due and such sum remains unpaid for 14 days after written notice from Cybernet that such sum has not been paid; or
 - Customer breaches or Cybernet has reason to suspect that Customer has breached Clause 15.

17. ENTIRE AGREEMENT

- a) The Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.
- b) The Customer warrants to Cybernet that it has not been induced to enter into the Agreement by any prior oral representation (whether innocently or negligently made) except as specifically contained in the Agreement.

18. ASSIGNMENT

Cybernet may sub-contract all or any of its obligations under the Agreement to a competent third party. Except for this, neither party shall assign or otherwise transfer any of its rights or obligations.

19. NOTICES

- a) Notices must be in writing and sent to the address of the recipient set out in the Agreement or the recipient's registered office or such other address as the recipient may designate: Cybernet Systems Corporation, 727 Airport Boulevard, Ann Arbor, MI 48108, USA, 734-668-2567.
- b) Any such notice may be delivered personally or by first class prepaid letter, telex or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class 48 hours after posting and if by telex or facsimile transmission when dispatched.
- c) Any notice concerning the validity or existence of the Agreement must be delivered personally or sent by Recorded Delivery first class letter.

20. SEVERANCE

If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Agreement and the remainder of the provisions in question shall not be affected.

21. LAW AND VENUE

The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan and shall be subject to the exclusive jurisdiction of the State of Michigan and the USA. Either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm.