

# NEWEGG STANDARD PO TERMS & CONDITIONS

**1. Introduction; Acceptance.** Vendor manufactures, sells and/or resells products for retail sales ("Vendor Products"), which Newegg Inc. or any of its subsidiaries (including without limitation, Magnell Associate, Inc. and Advanced Battlestations, Inc.) ("Customer") is purchasing pursuant to a Customer Purchase Order accepted by Vendor. Vendor agrees that its acceptance of the Purchase Order constitutes (1) Vendor's express disclaimer of any contrary terms in the Purchase Order and its terms and conditions of purchase or the terms and provisions of any other documents provided by Vendor; however, the terms and conditions of any agreement between Vendor and Customer provided by Customer shall control in the event of conflict with the terms and conditions of the Full Purchase Order (as defined below), and (2) Vendor's express acceptance of these Standard PO Terms and Conditions (the "Terms" which together with the Purchase Order, the "Full Purchase Order").

**2. Notices.** All communications from Vendor to Customer relating to the Purchase Order shall be addressed to the Customer's representative(s) identified on the Purchase Order and all communications relating to these Terms shall be addressed to: Legal Department, 17560 Rowland Street, City of Industry, CA 91748.

**3. Acknowledgment.** The shipment of any Vendor Products, acceptance of payment for the shipment of any Vendor Products and/or an agreement of acceptance of the Purchase Order shall constitute acceptance by Vendor of the Full Purchase Order and each and all of the Terms stated herein.

**4. Vendor Responsibilities.** Vendor shall (i) package the Vendor Product ordered in compliance with the terms stipulated in the Purchase Order, including all applicable Customer packaging specifications, and national or international standards; (ii) keep Customer advised of the status of the Purchase Order; (iii) provide Customer with such reports as are appropriate to the nature of the goods ordered and as may be reasonably requested by Customer from time to time; and (iv) maintain insurance coverage as set forth herein.

**5. Shipping Terms.** Unless otherwise specified by Customer, delivery of Vendor Products is to be D.D.P. (INCOTERMS 2000), destination (as designated by the Customer) for international shipments. Vendor shall bear all costs for freight, insurance, duties, taxes and other shipping expenses to domestic destinations designated by Company and shall bear all risk of loss until the goods are duly tendered to Company. If Customer has not designated routing, Vendor is required to ship via the most expedient method that will meet the delivery date. Vendor shall provide a detailed packing list to Customer for all shipments referencing the delivery location, part number/barcode for the Vendor Product, Purchase Order number, quantity in each shipment covered by the packing list, and other information as required by this Full Purchase Order. All shipping terms used and not otherwise defined herein have the meaning set forth in INCOTERMS 2000.

**6. Shipment.** Vendor shall ship orders according to shipment dates requested on the Purchase Order, or within 24 hours of receipt of a Purchase Order if no shipment date is specified. Vendor shall immediately notify Customer in writing of any anticipated delay in meeting the delivery schedule stating the reasons for the delay. Items shipped after their scheduled shipment date will be shipped by Vendor on an expedited overnight basis with the surcharge for such expedited overnight delivery being at Vendor's sole expense.

**7. Revisions/Cancellations.** Customer shall have the right to revise the delivery location or amount purchased under any Purchase Order by providing Vendor written notice at least 2 business days prior to a scheduled shipment date. Customer may cancel or reschedule any Purchase Order by providing Vendor written notice at least 1 business day prior to a scheduled shipment date. Customer shall not be subject to any penalties or cancellation charges for revisions and cancellations made in accordance with this Section.

**8. Rejections>Returns.** All Vendor Products are subject to inspection and acceptance by Customer. Customer reserves the right to refuse any Vendor Product and to cancel all or any part of a Purchase Order for Vendor Product not conforming to mutually agreed upon specifications or the specifications or performance of samples shown to Customer. Acceptance of any part of the Purchase Order shall not bind Customer to accept future shipments of Vendor Product. Customer reserves the right to return any or all Vendor Product due to it being obsolete, defective, damaged, or returned unopened by Customer's end users. All Vendor Products may be returned to Vendor for replacement at Vendor's expense, or, at Customer's sole option, for a credit or refund to be immediately issued to Customer. Vendor shall bear all transportation costs and risk of loss for such returns. In the event of any conflict between the terms of this Full Purchase Order and Vendor's standard return policies, the terms of this Full Purchase Order shall prevail.

**9. Invoice.** Unless otherwise specified by Customer in writing, a separate invoice shall be issued for each shipment and only after the Vendor Product is shipped. No payment will be made or required prior to receipt of Vendor Product and current invoice. Payment due dates will be computed from the date of receipt of an invoice to the date Customer's check is mailed (or payment is otherwise transmitted by Customer).

**10. Payments.** Unless otherwise specified by Customer in writing, payment terms will be net 60 days. Customer may withhold payment of any amounts to be paid to Vendor which are disputed in good faith by Customer. Customer shall pay a service charge (equal to the lesser of 0.5% per month or the maximum rate allowed by law) for all late payments.

**11. Representations and Warranties; Disclaimer.** Vendor represents and warrants to Customer that (i) for a period of 12 months following delivery to the end-user, the Vendor Products shall comply with the specifications for such products, or with samples shown or provided to Customer, contain no defects, and perform as described in the associated documentation under normal use and maintenance; (ii) packaging of the Vendor Products supplied pursuant to this Purchase Order conforms to the specifications as stated in this Purchase Order; (iii) Vendor has all necessary rights, approvals and authority to enter into, execute and deliver this Full Purchase Order; (iv) Vendor Products do not and shall not infringe or misappropriate any third party's intellectual property or any other rights and the manufacture, sale and shipment of Vendor Products and materials therein shall conform with all applicable law and governmental regulations (including without limitation, export and hazardous substance laws, regulations, rules and directives and California's Proposition 65); (v) Vendor Products are fully compliant with all applicable laws, regulations, rules and directives relating to Restrictions of Hazardous Substances, including without limitation, Section 25214.10 of the California Health and Safety Code ("RoHS"); and (vi) Vendor has provided to Customer any and all information with regard to resale restrictions of any kind on the Vendor Products purchased by Customer from Vendor. EXCEPT AS EXPRESSLY STATED HEREIN OR IN THE AGREEMENT, VENDOR MAKES NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY.

**12. Indemnification.** Vendor agrees to indemnify, defend and hold Customer, its parent, affiliates, subsidiaries, related entities, officers, directors, employees, contractors and customers harmless from and against any and all liabilities, damages, costs and expenses, including reasonable attorneys' fees (collectively, "Losses"), incurred by Customer and the indemnified parties as a result of or arising from (a) any actual or alleged infringement or violation of any third party intellectual property or other rights by Vendor or Vendor Products; (b) the failure or alleged failure of Vendor Products to comply with product and packaging specifications or with any express or implied warranties of Vendor; (c) the violation or alleged violation of any law, statute or governmental ordinance due or related to the manufacture, possession, use or sale of any Vendor Products; (d) any actual or alleged unfair business practices, false advertising, misrepresentation or fraud resulting from Vendor Product specifications provided by Vendor and disclosed by Customer; and (e) any breach or alleged breach of a Vendor representation or warranty or any other provision of this Agreement by Vendor. Customer shall have the option, but not obligation of assuming and controlling the defense and settlement of any such claims, at Vendor's expense if, in Customer's sole discretion, Customer's interest would be prejudiced otherwise. In the event that such claims should arise, Customer agrees to provide Vendor prompt notice of the existence of any claim of which Customer is aware, reasonable assistance in the defense and settlement of any claim at Vendor's request and expense (to the extent Vendor has assumed the defense and settlement of such claim). Customer's express written consent shall be required in connection with any settlement that includes terms beyond payment of money by Vendor. This Section will not be construed to limit or exclude any other claims or remedies that Customer or its respective affiliates (and its and their respective directors, employees and agents) may assert.

**13. Limitation of Liability. EXCEPT FOR (I) WILFUL OR GROSSLY NEGLIGENT BREACHES OF ANY OBLIGATIONS UNDER THIS AGREEMENT, (II) BREACHES OF ANY CONFIDENTIALITY OBLIGATIONS, (III) THE FULFILLMENT OF ANY INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT AND (IV) AS OTHERWISE PROVIDED, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER SUCH PARTY, FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.**

**14. Insurance.** At all times, Vendor shall obtain and maintain, at its sole expense, a comprehensive "all-risk" and general liability policy of insurance, in amounts not less than \$3 Million per occurrence and \$5 Million annual aggregate, against (i) loss or damage by fire or any other casualty (including but not limited to business interruptions, Vendor outages and acts of terrorists) to the Product inventory, Vendor facilities or those controlled by Vendor, assets and operations of Vendor; (ii) defective product, false advertising, trademark or service mark, patent or copyright infringement claims alleged or arising from the market and resale of the Products and/or end user use of the Products; and (iii) Customer's use or reliance on the Product Information provided to Customer by Vendor. Vendor shall provide a current Certificate of Insurance satisfactory to Customer reflecting the types of coverage and limits required hereunder, and shall name Customer as an additional insured in the aforementioned required insurance policy. Except as expressly provided in these terms and conditions, these insurance requirements shall not limit Vendor's liability to Customer in the event insurance recoveries/proceeds are less than Vendor's liability to Customer.

**15. Equal Opportunity.** The parties hereby incorporate the requirements of 41 C.F.R. Section 60-1.4(a)(7), 60-250.5, 60-300.5 and 60-741.5, if applicable.

**16. Complete Agreement.** This Full Purchase Order contains the entire understanding of the parties with respect to the subject matter herein and except as specifically provided herein, supersedes any and all understandings or agreements, oral or written, between the parties relating to the subject matter hereof.

**17. Amendments; Waivers.** No modification, amendment or waiver of any term or condition hereof shall be effective unless consented to in a writing signed by Customer and Vendor, which consent shall not be unreasonably withheld or delayed. Unless agreed to by Customer in writing, Customer will not be bound to any additional or different terms or conditions hereafter transmitted by Vendor and Customer will not be bound by its silence, course of dealing, usage of the trade or its acceptance of the packaged goods. Customer and Vendor hereby acknowledge and agree that the waiver of any provision hereto at a particular time by Customer shall not constitute a waiver of such provision or any other provision at any other time, unless so specified in writing by Customer.

**18. Grant of Rights.** Vendor hereby grants to Customer a non-exclusive, non-transferable license to use all Vendor trademarks, service marks, and other owned or licensed intellectual property, or any other similar rights held by Vendor necessary or desirable for Customer to market and sell Vendor Products.

**19. Assignment.** The Full Purchase Order and Vendor's rights, duties and obligations hereunder shall not be assignable by Vendor without the prior written consent of Customer, which consent may be withheld in its sole discretion, but Customer shall have the right to assign the Full Purchase Order to any subsidiary, affiliate or successor without Vendor's consent. The Purchase Order and these terms and conditions shall inure to the benefit of and be binding upon Customer and Vendor and their respective successors and permitted assigns; nothing contained herein shall give to any other person any benefit or any legal or equitable right, remedy or claim.

**20. Miscellaneous.** Headings used herein are for convenience only and shall not be used for interpretive purpose. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of these Terms. A party's failure to act with respect to another party's breach of any provision contained herein does not constitute a waiver. If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, so as to be enforceable, or otherwise deemed ineffective and the remaining provisions shall not be affected. The rights and obligations of the parties under this Full Purchase Order shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of goods; rather these rights and obligations shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California. Vendor expressly agrees and acknowledges that any disputes, controversies or claims arising out of or relating to this Full Purchase Order will be referred to and settled by binding arbitration in Los Angeles County, California under the Commercial Arbitration Rules of the American Arbitration Association, using one arbitrator mutually agreeable to the parties. The parties agree that no provision herein shall prevent or limit Customer's right to seek provisional attachment or other similar remedies prior to arbitration. These terms and conditions will survive the fulfillment of the Full Purchase Order.