

# GENERAL TERMS AND CONDITIONS OF SALE

## 1. PRICES

FACILIS prices are exclusive of taxes, shipping, and insurance. Domestic prices apply only to products purchased for use in the United States. Export prices apply to products purchased for export.

## 2. QUOTATIONS

Unless otherwise indicated therein, FACILIS quotations shall be valid for thirty (30) days from date of issuance.

## 3. PURCHASE ORDERS

A contract will be formed only upon FACILIS's acceptance of Customer's written purchase order specifying the model number, options, and quantities of each product ordered and the requested shipping dates, shipping destinations, and invoice point. Orders submitted to an unexpired quotation must also reference the quotation by number. Oral purchase orders will be accepted only subject to written confirmation.

Customer's submission of a purchase order in response to any quotation including these terms and conditions shall be deemed acceptance of these terms and conditions to the exclusive of any other terms or conditions appearing in such purchase order. FACILIS's acknowledgment of Customer's purchase order is expressly made conditional upon Customer's assent to these terms and conditions, which assent shall be presumed conclusively from Customer's failure to reasonably object in writing or from Customer's acceptance of any or all of the products ordered.

## 4. SCHEDULING SHIPMENTS

FACILIS will schedule shipments based upon Customer's request and FACILIS's shipping capability at the time Customer's order is accepted. Upon such acceptance, FACILIS will issue an acknowledgment that will indicate the estimated shipping dates.

## 5. RESCHEDULING AND CANCELLATION

Customer may request that orders be rescheduled or cancelled only by written request submitted to the FACILIS sales office indicated by FACILIS as being responsible for the order. All such requests shall be subject to acceptance by FACILIS. FACILIS may reject a request to reschedule a shipment if the new schedule does not conform to the requirements of the preceding section regarding scheduling of shipments. Any request to reschedule or cancel any shipment, which request is received less than thirty (30) days before the scheduled shipping date, may be rejected as untimely, or at their option, FACILIS may accept subject to payment of a rescheduling or cancellation charge in the amount of five percent (5%) of the non-discounted price of each unit affected. Terms and charges applicable to products subject to special quotation, if different from those stated herein, will be as specified in the quotation.

## 6. SOFTWARE

Software products are furnished subject to a separate license agreement, a copy of which may be obtained from the FACILIS sales office.

## **7. SHIPPING AND DELIVERY**

FACILIS will use its best efforts to ship on or before the estimated shipping dates indicated in FACILIS's acknowledgment except that FACILIS will not ship before a Customer's requested shipping date if Customer's order so instructs. FACILIS shall not, in any event, be liable for any delay or failure to deliver resulting from circumstances which are beyond FACILIS's reasonable control or which would cause FACILIS to incur unreasonable expense in order to avoid such delay or to affect such delivery.

Delivery shall be FOB FACILIS's shipping dock in the absence of specific written instructions from Customer. FACILIS will select the carrier, but FACILIS shall not thereby assume any liability in connection with the shipment. If such shipments are insured, FACILIS will bill the Customer an insurance charge for each shipment. These charges shall be paid by Customer and will be shown on the invoice as a single item identified as Shipping Charges or as separate items (export sales only).

## **8. EXPORT RESTRICTIONS**

Customer shall neither export nor re-export, directly nor indirectly, any product purchased hereunder, or the direct product thereof, to any country to which such export or re-export is restricted by United States law or regulation without the prior authorization, if required, of the Office of Export Administration, Department of Commerce, Washington, D.C.

## **9. TITLE, RISK OF LOSS, AND SECURITY INTEREST**

Title and risk of loss for all hardware products shall pass to Customer upon transfer of the products by FACILIS to the carrier. Title to software products and all copies thereof shall remain in FACILIS or others from whom FACILIS has obtained a licensing right. FACILIS reserves a security interest in each hardware product shipped until the entire amount due has been paid.

## **10. TAXES**

Any and all state and local sales, use, excise, privilege, and similar taxes imposed on FACILIS or which FACILIS has a duty to collect in connection with the sale, delivery, or use of any products and appear as separate items on the invoice will be paid by Customer. If sales to Customer is exempt from such taxes, Customer shall furnish to FACILIS a certificate of exemption from the applicable taxing authority.

## **11. INVOICES AND PAYMENT**

FACILIS shall submit an invoice to Customer at the time of each shipment. For any rescheduling or cancellation charge, an invoice shall be submitted by FACILIS whenever such charge is assessed. All invoices shall be submitted to the invoice point specified in Customer's purchase order. Payment terms are cash upon delivery or, at the option of FACILIS, set thirty (30) days from the date of the invoice. All payments shall be in United States dollars.

FACILIS retains the right to change the credit terms at any time upon notice to Customer when, in the opinion of FACILIS, Customer's financial condition or record of payments so warrants. Should Customer become delinquent in the payment of any amount due hereunder, FACILIS at its option and upon notice to Customer may suspend performance under any outstanding order.

## **12. HARDWARE WARRANTY**

FACILIS warrants to its Customers that the hardware products that it manufactures will be free from defects in materials and workmanship for the periods set forth in the applicable supplemental warranty statement. If any such product proves defective during the applicable warranty period, FACILIS, at its option, either will repair the defective product without charge for parts and labor or will provide a replacement in exchange for the defective product.

In order to obtain service under the warranty, Customer must notify FACILIS of the defect before the expiration of the warranty period and make suitable arrangements for the performance of service. Customer shall be responsible for packaging and shipping the defective product to the service center designated by FACILIS with shipping charges prepaid. Customer shall be responsible for paying all shipping charges, duties, and taxes. Information concerning the warranty period is set forth in the applicable supplemental warranty statement, a copy of which may be obtained from the nearest FACILIS sales office. Hardware products are sold subject to the provisions of these statements. This warranty shall not apply to any defect, failure or damage caused by improper use or inadequate maintenance and care. FACILIS shall not be obligated to furnish service under this warranty: a) to repair damage resulting from attempts by personnel other than FACILIS representatives to install, repair or service the product, b) to repair damage resulting from improper use or connection to incompatible equipment, or c) to service a product that has been modified or integrated with other products when such modification or integrations increase the time or difficulty of servicing the product.

THIS WARRANTY IS GIVEN BY FACILIS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED. FACILIS DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FACILIS'S RESPONSIBILITY TO REPAIR OR REPLACE A DEFECTIVE PRODUCT IS THE SOLE AND EXCLUSIVE REMEDY PROVIDED TO THE CUSTOMER FOR BREACH OF THIS WARRANTY. FACILIS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IRRESPECTIVE OF WHETHER FACILIS HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

## **13. SOFTWARE WARRANTY**

FACILIS warrants its software products in accordance with the warranty provisions of the applicable software license agreement, a copy of which may be obtained from the FACILIS Sales office.

## **14. INFRINGEMENT**

FACILIS, at its expense, will defend against any claim based on an allegation that a product furnished hereunder infringes a patent or copyright of another in the United States and FACILIS may pay any resulting costs, damages, and attorney's fees finally awarded against Customer that is attributable to such claim or will pay the part of any settlement that is attributable to such claim provided that: 1) Customer notifies FACILIS promptly in writing of the claim; 2) FACILIS is permitted to control the defense or settlement of the claim, and 3) Customer coordinates reasonably in such defense or settlement at FACILIS's expense.

For products shipped outside the United States pursuant to a valid export order, the defense offered herein shall extend to claims based on an allegation that a product furnished hereunder infringe a patent or copyright of another in any country in which FACILIS has previously introduced the product.

In its defense or settlement of any such claim, FACILIS may: 1) procure for customer the right to continue using the product, 2) modify the product so that it becomes non infringing, or 3) replace the product with an equivalent product not subject to such claim. If the use of any product furnished hereunder is enjoined and none of the preceding alternatives is reasonably available to FACILIS, FACILIS will provide Customer an opportunity to return the product and receive a refund of the purchase price paid, less a reasonable allowance for use.

FACILIS shall have no liability to Customer for claims of infringement based upon: 1) the use of any product in combination with any product not supplied by FACILIS, or 2) the use of any product designed, manufactured, or modified to the specifications of Customer. The foregoing states the entire obligation and liability of FACILIS with respect to infringement and claims thereof.

#### **15. LIMITATIONS OF LIABILITY**

EXCEPT AS PROVIDED IN THE PRECEDING SECTION REGARDING INFRINGEMENT, IN NO EVENT SHALL FACILIS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF CUSTOMER'S PURCHASE OR USE OF ANY PRODUCT, EVEN IF FACILIS HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

#### **16. WAIVER**

The failure of either party to enforce at any time the provision of these terms and conditions shall be construed to be a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, either express or implied, of any breach of any of these terms and conditions, shall be construed as a waiver of any other such terms or conditions.

#### **17. ASSIGNMENT**

Customer may not assign or otherwise transfer its rights or obligations hereunder without the prior written consent of FACILIS. No attempt to assign or transfer in violation of this provision shall be valid or binding upon FACILIS.

#### **18. GOVERNING LAW**

The rights of the parties hereunder shall be governed by the laws of the State of Massachusetts.

#### **19. ATTORNEYS FEES**

If litigation is commenced by either party to enforce any provision of any contract including these terms and conditions, the prevailing party shall be entitled to recover reasonable costs and attorney's fees, both at trial and on appeal.

#### **20. NOTICES**

All notices required or authorized by terms and conditions shall be given in writing and shall be

deemed effective upon receipt. Notices to Customer shall be sent to the address shown in Customer's order. Notice to FACILIS shall be sent to the FACILIS sales office indicated by FACILIS as being responsible for the order.

## **21. EXPORT-IMPORT TERMS**

The Buyer agrees to cooperate and assist in any requirements requested by FACILIS Technology, Inc. that may arise from the United States Chamber of Commerce regarding the United States export process and regulations. In addition, the Buyer will advise FACILIS Technology, Inc. of any customers that would use chemical, or biological weapons or ballistic missiles for the application for a validated export license as required by the U.S. Chamber of Commerce. The Buyer also agrees to comply with any import regulations or processes that may be required by the Territory the product/s are being imported into by the Buyer. The Buyer shall neither import/export or re-export, directly or indirectly, any product purchased hereunder to any country to which such action is restricted by the country of intended import or restricted by the regulations or laws of the U.S.A.

FACILIS TECHNOLOGY, INC. 577 Main Street Hudson, MA U.S.A. Phone: (978) 562-7022  
Fax: (978) 562-9022 [www.facilis.com](http://www.facilis.com)