

TIER ONE TECHNOLOGIES, INC. TERMS AND CONDITIONS

All sales by Tier One Technologies, Inc. (“Seller”) are subject to the following conditions in addition to those on the face hereof:

- 1)** Seller warrants to Buyer that for a period of 30 days following the delivery of product to Buyer, the Products will be free from defects in material and workmanship and will function in substantial compliance with the manufacturer’s written specifications thereof. Buyer’s exclusive remedy shall, in any case, be limited, at the Seller’s election, to: A) Repair or replacement of the defective products; B) Refund of the purchase price thereof or C) Crediting of the same against future purchases by Buyer. **THE FOREGOING WARRANTY IS THE ONLY WARRANTY MADE BY SELLER WITH RESPECT TO THE PRODUCTS. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND BY THE SELLER, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OR PERFORMANCE OF THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 2)** IN NO EVENT WILL SELLER BE LIABLE FOR ANY LOST PROFITS OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.
- 3)** All products shall be deemed and presumed to be acceptable to Buyer and in full compliance with the warranties made herein unless, within 30 days from the date of delivery, Buyer shall have notified Seller in writing to the contrary. Any claims for shortages or in transit damage must be made to Seller in writing within 10 days from the date of this invoice. All claims and returns must, moreover, be submitted to Seller’s facility using this invoice. All returns must be authorized in advance by Seller or on Seller’s Standard return authorization form.
- 4)** All Products shall be shipped F.O.B. Seller’s facility and shall, except for any claim or lien, Seller returns for non- payment or other breach of terms, become the property of Buyer upon delivery to the carrier. Buyer shall assume all risk and liability for loss, damage or destruction after delivery to carrier.
- 5)** Title to the Products shall pass to Buyer upon delivery to the carrier. Buyer agrees, however, that Seller shall retain a purchase money security interest in all Products and to any proceeds thereof, until the purchase price and any other charges due to Seller shall have been paid in full. Buyer agrees to execute any financing statement or other documents as Seller may request in order to perfect Seller’s security interest. Upon any default by Buyer hereunder, Seller shall have all rights and remedies of a secured party under the California Commercial Code, which rights and remedies shall be cumulative and not exclusive.
- 6)** Seller makes no representation concerning patents, trademarks, trade names or service marks (collectively “Patents”) of any of its Products. Seller’s obligation for Patent infringement is expressly limited to any indemnification, which Seller’s vendor of the Products has agreed in writing to provide (or by operation of law has been deemed to provide) to Seller.
- 7)** Buyer shall be responsible for all reasonable costs and expenses incurred by Seller in collection of any sums owing by Buyer or in Seller’s enforcement of any provision of this Agreement and Seller shall not be obligated to make any further deliveries to Buyer. Such reasonable costs and expenses shall include, but not be limited to, reasonable attorney’s fees.
- 8)** Seller shall not be liable for any failure or delay in the performance of order or contracts or in the delivery or shipment of Products or for any damages suffered by Buyer by reason of such failure or delay, when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fires, floods, accidents, riots, acts of God, war, governmental interference of embargoes, strikes, labor difficulties, shortage of labor, fuel, power, material or supplies, transportation delays, delays in deliveries by Seller’s vendors or any other cause or causes (whether or not similar in nature to any of those herein specified) beyond Seller’s control.
- 9)** Enforcement of this Agreement shall be governed by the laws of the State of California. Any court action or proceeding of any nature whatsoever, in law or equity, for damages otherwise, related thereto shall be instituted only in the courts by the County of Ventura in the State of California and only such courts shall have jurisdiction of any such action or proceeding. By acceptance of the Products, Buyer irrevocably consents to the personal jurisdiction of such courts in connection with any such action or proceeding.
- 10)** Before any court action or any proceeding is filed by either party involved in this transaction, the parties will participate in a mandatory mediation, which will last a minimum of four hours.
- 11)** This Invoice and the Terms and Conditions set forth herein constitute the Agreement between Seller and Buyer. If the terms and conditions of this Agreement differ in any way from the terms and conditions of Buyer’s purchase order or any other document submitted by Buyer, this agreement will be not construed as a “counteroffer” and any terms and conditions set forth in Buyer’s Purchase Order which conflict with the terms and conditions set forth herein will have no force and effect. Buyer’s acceptance of the Products shall be conclusive presumption that Buyer has accepted all of the terms and conditions of this Agreement. No addition to or modification of any of these terms will be effective unless made in writing and signed by the Seller and Buyer.
- 12)** If any dispute arises between you and Tier One Technologies, Inc., and a lawsuit is filed, the prevailing party will be entitled to recover their reasonable attorneys fees and costs.