

PNY Technologies, Inc. Terms and Conditions

Seller ("Supplier") agrees to sell to PNY Technologies Inc. ("Company"), and Company agrees to buy from Supplier, the Goods or Services reflected on the face of this Purchase Order ("Order") on the following terms and conditions:

ENTIRE AGREEMENT –The terms and conditions set forth below together with those appearing on the face of this Purchase Order (PO) are the complete and exclusive agreement between PNY and the Seller identified on the face of this Order ("Seller"). This PO takes precedence over and supersedes any additional or different terms and conditions of Seller, whether issued before or after the date of this PO. PNY rejects any contrary or additional terms or conditions. No modification of this Order shall be binding on either party unless in writing and signed by each party. This PO is accepted by Seller's performance or partial performance, or in any other manner indicating acceptance that is consistent with the provisions of this PO.

ACCEPTANCE – No order is valid or binding upon Company unless given on this Purchase Order form and properly signed by Supplier on the face hereof. If Supplier fails to deliver the acceptance copy signed by Supplier and delivers the goods, Company is free to accept or reject Goods delivered. Supplier's commencement of work on the goods or services covered under this Order or any conduct by Supplier that recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Supplier to the terms and conditions contained herein.

PRICE – Supplier shall sell to Company the goods or services shown on the face of this Order at the prices specified. Pricing for the term of this Agreement shall not exceed the prices listed in this Order. Supplier warrants and represents that its prices and other terms are not in excess of the lowest prices and terms with other similarly situated customers for similar quantities of Goods or Services of like kind and quality. Company may request a reduction of prices for Material under this Agreement by giving written or verbal notice to Supplier.

TAXES – Company shall reimburse Supplier only for the following tax payments with respect to this Order unless Company advises Supplier that an exemption applies: state and local sales and use taxes, as applicable. Company is responsible for no other taxes, including without limitation, taxes on Supplier's income, assets, or business. Taxes payable by Company shall be billed as separate items on Supplier's invoices and shall not be included in Supplier's prices. Company shall have the right to have Supplier contest any such taxes that Company deems improperly levied at Company's expense and subject to Company's direction and control.

PAYMENT TERMS –Supplier shall invoice Company upon shipment of Goods or in the calendar month following the provision of Goods or Services. Invoices shall be paid by Company within sixty (60) days of the date the invoice is received. Payment shall not constitute either an acceptance of the Goods or Services, or any waiver of impairment of any of Company's rights under this Agreement at Law. Company may deduct any monies owed to Company by Supplier for this Order, any other Order, or any other transaction between Company and Supplier.

DELIVERY – Upon receipt of this Order, Supplier, acknowledging that TIME IS OF THE ESSENCE, shall deliver all goods or services within the respective interval(s) shown on the face hereof. Unless otherwise specified in this Order, shipments of Goods shall be F.O.B. to Company facility. Supplier bears all costs of packaging, loading, shipment and all risk of loss until delivery is made in accordance with this Order. In the event Supplier shall fail to deliver goods or services within the interval(s) provided on the face hereof, then in addition to all other rights and remedies at law or equity or otherwise available to Company and without any liability or obligation of Company, Company shall have the right to cancel this Order, buy the goods and services elsewhere and hold Supplier responsible for the cost of cover, or establish a new delivery date for Supplier. Cancellations pursuant to this paragraph shall be at no charge to Company. Supplier shall be responsible for the cost of any required expedited airfreight related to late or rescheduled delivery due to Supplier's action.

NOTICE OF DELAYS -Whenever Supplier has knowledge of an actual or potential delay to the timely performance of this Order, Supplier shall immediately notify Company in writing of all relevant information with respect to such delay. Such notice is for informational purposes only and shall not relieve Supplier of Supplier's obligations to comply with Company's requirements under this Order. Company may delay delivery and/or acceptance occasioned by causes beyond its control.

SHIPPING – Supplier shall: (1) ship all Goods F.O.B. to Company designated destination unless otherwise specified in this Order; (2) ship the Material covered by this Order complete unless instructed otherwise in writing; (3) ship according to routing instructions given by Company; (4) enclose a packing memorandum with each shipment and, when more than one package is shipped, identify the package containing the memorandum; and (5) place the Order number on all subordinate packages and documents. Supplier shall preserve, package, handle and pack the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, Company specifications, government regulations, and other applicable requirements. Shipping and routing instructions may be furnished or altered by Company at any time. If Supplier does not comply with the terms of this section, Supplier authorizes Company to deduct from any invoice of Supplier (or to charge back to Supplier), any increased costs incurred by Company as a result of Supplier's noncompliance. Supplier bears all costs of packaging, loading, shipment and all risk of loss until delivery is made in accordance with this Order.

CHANGE NOTIFICATION – Supplier agrees that it shall not discontinue goods sold to Company under this Order for a period of at least one (1) year from the date of this Order, unless it first shall give Company at least ninety (90) days prior written notice and an opportunity to purchase additional items of the Goods proposed to be discontinued. Upon notice of discontinued Goods, Company may cancel this order without liability to Company, and Supplier agrees to accept returns of discontinued Goods and to issue Company a full credit at the price which Company originally paid or contracted to pay for such Goods. Supplier shall not, without prior written consent from Company, make any process or design changes affecting the Goods. Notwithstanding any other provisions of this Agreement, if Company, in its sole discretion, does not agree to the change proposed by Supplier, then in addition to all other rights and remedies at law or equity or otherwise, and without any cost to or liability to Company, Company shall have the right to terminate this Agreement and to terminate any or all Orders for Material affected by such change without further obligation.

TERMINATION – Company may at any time cancel this Order, in whole or in part, by written notice to Supplier. Company may without charge, change or cancel any portion of this Order if Company gives Supplier notice (i) for custom Goods or Services at least 30 calendar days prior to Delivery Date, and (ii) for standard Goods or Services at least 14 calendar days prior to Delivery Date. In such case, Company's liability shall be limited to payment for Material accepted by Company or for Work performed up through Company's notice of termination. If Supplier breaches any provision of this Order, Company may terminate the whole or any part of this Order unless Supplier cures the breach within ten (10) work days after the date of Company's notice of breach.

WARRANTY – Supplier warrants to Company and its customers that Material and/or Services furnished will be (1) new, merchantable, free from defects in design, material and workmanship and will conform to and perform in accordance with the specifications, drawings, samples and other requirements referred to in this Order or provided by Supplier prior to the date of this Order; (2) performed in a first class, workmanlike manner; (3) be free of all liens, encumbrances and other claims; (4) do not infringe or misappropriate any patent, trademark, copyright or other intellectual property right of a third party; (5) be new and shall not contain any used or reconditioned parts or materials. Supplier further warrants and represents that it has the right to sell the Goods and/or Services that are required to Company, and if applicable, to license any intellectual property rights in the Goods or Services that are required to allow PNY to resell and otherwise to full use of the Goods or Services free and clear of all adverse claims.

These warranties extend to the future performance of the Material and shall continue for the longer of (a) the warranty period applicable to Company's sales to its customers of the Material or of products which incorporate the Material, (b) one year after the Material is accepted by Company or (c) such greater period as may be specified elsewhere in this Order. If Material furnished contains manufacturers' warranties, Supplier hereby assigns such warranties to Company and its customers. All warranties shall survive inspection, acceptance and payment. Material or services not meeting the warranties will be, at Company's option, returned for or subject to refund, repaired, replaced or re-performed by Supplier at no cost to Company or its customers and with transportation costs and risk of loss and damage in transit borne by Supplier. Repaired and replacement Material shall be warranted as set forth above in this Section.

NONCOMPLYING PRODUCTS AND SERVICES – If any Good is defective or otherwise not in conformity with the requirements of this Order ("Noncomplying Product"), Company at its option, may: (1) return the Noncomplying Product for repair, replacement or reworking at Supplier's sole cost and expense, or (2) take a credit against the purchase price of the Noncomplying Product. If any Services are defective, Supplier agrees to re-perform the Services or to perform all Services necessary so as to deliver the Services to meet the requirements of this Order, at no additional cost or expense to Company. All Noncomplying Products, over shipments, and early shipments returned by Company to Supplier, and all replacement or reworked Products shipped by Seller to Company to replace Noncomplying Products, shall be at Supplier's risk and expense including transportation charges.

LICENSE GRANT – If Goods or Services include Software, firmware or documentation, Supplier grants to Company a perpetual, non-exclusive, worldwide License to use, copy, produce, display and distribute such products either as delivered to Company or as integrated in a Company or other products. Such license will include the right of Company to sublicense third parties to achieve the foregoing. Supplier further grants to Company a non-exclusive license to use, exhibit, excerpt, reproduce, publish, perform and transmit via the Internet and otherwise use all copyrights, trade names, trademarks and service marks associated with the Goods or Services in order to promote and sell them or the results or products thereof.

INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION – Seller agrees to defend, indemnify, and hold harmless PNY and its affiliates, subsidiaries, assigns, officers, employees, subcontractors, and customers from and against all claims, losses, demands, damages, liabilities, settlements, costs, expenses (including the reasonable fees of

attorneys and other professionals), obligations, causes of action, suits, or injuries, of any kind or nature, arising from (i) assertion that the Goods or Services, or any part thereof, infringement or misappropriate the intellectual property rights of any third party, or (ii) a breach of any term, warranty or representation of Seller in this Order. If the use of the Goods or the results of any Services by PNY or any PNY customer is enjoined or threatened to be enjoined, Seller, at its sole cost and expense shall (i) replace the Goods with a noninfringing product without loss of functionality, (ii) modify the Goods to be noninfringing, or (iii) if unable to replace or modify the infringing Product, refund in full all costs paid by PNY for the infringing Product and all resulting costs of cover.

INFRINGEMENT – Supplier shall indemnify, defend, and save harmless Company, its affiliates and their customers, officers, directors, and employees (all referred to in this clause as "Company") from and against losses, damages, liabilities, fines, penalties, and expenses (including attorney fees) that arise out of or result from any and all claims of infringement, alleged infringement, misappropriation or alleged misappropriation of any right in any patent, copyright, trademark or trade secret, or any other intellectual property right or private right or other proprietary or personal interest, the foregoing claims including but not limited to claims arising from provision of services, claims relating to the provision or use of goods and other products acquired under this Order, and claims otherwise related by circumstances to the existence of this Order or performance thereunder.

ENJOINED - If the use of the Goods or the results of any Services by PNY or any PNY customer is enjoined or threatened to be enjoined, Seller, at its sole cost and expense, shall immediately use its best efforts to procure for PNY and its customers the right to continue using the Goods or the results of the Services. If Seller is unable to do so, Seller, at its sole cost and expense shall (i) replace the Goods with a noninfringing product without loss of functionality, (ii) modify the Goods to be noninfringing, or (iii) if unable to replace or modify the infringing Product, refund in full all costs paid by PNY for the infringing Product and all resulting costs of cover.

IDENTIFICATION – Supplier shall not, without Company's prior written consent, engage in publicity related to this Order, or make public use or reference to any Identification in any circumstances related to this Order. "Identification" means any trade name, trademark, service mark, insignia, symbol, logo, or any other designation or drawing or simulation of PNY Technologies, Inc. Supplier shall remove or obliterate any Company Identification, trademarks, trade names, insignia, part numbers, symbols, or decorative designs, prior to any use or disposition of any Material rejected, returned or not purchased by Company. Supplier agrees to indemnify, defend (at Company's request) and save harmless Company, its customers and each of their officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorney's fees) that arise out of or result from any failure to do so. If requested by Company, Supplier shall affix Company logos and trademarks to the Goods or their packaging, and shall use Company copyrighted packaging solely for the purpose of selling Goods to PNY and for no other purpose whatsoever. No license in or to any Company trademarks or trade names is granted by this Order or any other agreement. In the course of the relationship between PNY and seller, Seller may learn PNY Confidential Information. "Confidential Information" means the trade secret, proprietary, and confidential knowledge and business information of PNY which includes, but is not limited to, all information designated by PNY as confidential, all information or data concerning PNY's products (including the discovery, invention, research, improvement, development, manufacture or sale thereof), matters of a technical nature (such as ideas, concepts, designs, drawings, specifications, materials, diagrams, flow charts, research, development, know-how, computer programs and routines; and matters of a business nature (such as the identity of clients and prospective clients and suppliers, marketing techniques and materials, marketing and development plans, costs and forecasts, profits, margins, pricing plans, financial, investor and venture capital and financing information, plans for further development, and any other information of a similar nature not available to the public. Seller agrees that it shall not, without the prior written approval of PNY, directly or indirectly (a) reveal, report, publish, disclose or transfer any Confidential Information to any person, or entity, or (b) use any Confidential Information for any purpose or for the benefit of any person, or entity, except for the benefit of PNY. Seller agrees that all Confidential Information is and shall remain the exclusive property of the Company. Seller shall not retain copies of Confidential Information and agrees to return all copies thereof upon request or upon termination or expiration of this agreement or any relationship with PNY. Seller agrees that each employee, agent or subcontractor who performs work under this Agreement has been informed of the obligations contained herein and has agreed to be bound by them.

COMPLIANCE WITH LAWS – Supplier shall comply at its own expense with all applicable laws, ordinances, regulations, codes, including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections in performance under this Agreement. Supplier agrees to furnish to Company any information required to enable Company to comply with such laws, rules and regulations in its use of the Goods and Services.

REMEDIES – The rights and remedies granted to PNY pursuant to this PO are in addition to, and shall not limit or affect, any other rights or remedies available at law or in equity. Upon PNY's request, Seller shall provide PNY with a certification stating the country of origin for Goods, sufficient to satisfy the requirements of (i) the customer's authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States. Seller shall mark every Good (or the Good's container if there is no room on the good itself) with the country of origin. Seller shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt.

EXPORT CONTROL – The parties acknowledge that any products, software, and technical information (including, but not limited to, services and training) provided hereunder are subject to U.S. export laws and regulations and any use or transfer of such products, software, and technical information must be authorized under those laws and regulations. The parties agree that they will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Supplier, Company also agrees to sign written assurances and other export-related documents as may be required for Supplier to comply with U.S. export regulations.

CHOICE OF LAW - This agreement shall be interpreted and governed by the laws of the state of New Jersey without reference to its conflicts of laws rules. Seller hereby consents to the jurisdiction and venue of courts located in the state of New Jersey as the exclusive forum for the resolution of disputes.

LIMITATION OF LIABILITY – Company shall in no event be liable to Supplier or any third party for any special, reliance, incidental or consequential losses or damages whether in an action for or arising out of alleged breach of contract, delay, negligence, strict liability or otherwise, even if Company has been advised of the possibility of such damages. No action or proceeding against Company may be commenced more than one year after the alleged cause of action has accrued.

EXCLUSIVITY – This Order reflects a non-exclusive relationship, and Company is free to order any Goods or Services from any other person or entity. This Order does not imply the existence of a contractual relationship beyond its express terms. Nothing in this Order prevents Company from independently developing, acquiring from other third parties, distributing or marketing other Goods or Services which may perform the same or similar functions as the Goods or Services provided under this Order.

FORCE MAJEURE – Neither party shall be held responsible for any delay or failure in performance of any part of this Order to the extent such delay or failure is caused by fire, flood, explosion, strike, civil, governmental or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors. Supplier's liability for loss or damage to Company's Material in Supplier's possession or control shall not be modified by this section. When Supplier's delay or nonperformance continues for a period of at least ten (10) days, Company may terminate, at no charge, this Order.

SUPPLIER'S INFORMATION – Supplier shall not provide under, or have provided in contemplation of, this Order any technical, business or other intangible information, however conveyed, or any document, print, tape, disc, semiconductor memory or other information-conveying tangible article, and unless Supplier has the right to do so and Supplier shall not view any of the foregoing as confidential or proprietary. If Supplier must furnish any such information to Company with restrictions, it shall only be furnished after negotiation and execution on behalf of Company of a separate written agreement specifically identifying the documents to be furnished and setting forth Company's rights and obligations with respect thereto.

If Supplier breaches any provision of this Order, Company may terminate the whole or any part of this Order unless Supplier cures the breach within ten (10) work days after the date of Company's notice of breach.

The individual signing this Order has the authority to bind Supplier.