



## TERMS AND CONDITIONS OF SALE

Updated: February 9, 2022

**THESE TERMS AND CONDITIONS ("AGREEMENT") APPLY TO YOUR ORDER AND PURCHASE OF HARDWARE, SERVICES AND SUPPORT (COLLECTIVELY, "PRODUCT") SOLD THROUGH Technologic Systems, Inc. dba embeddedTS ("embeddedTS") regardless of other or additional terms or conditions that conflict with or contradict this Agreement in any purchase order, document, or other communication ("Order"). Preprinted terms and conditions on any document of customer ("Customer") (for example: Orders or confirmations) and/or embeddedTS's failure to object to conflicting or additional terms will not change or add to the terms of this Agreement.**

### 1. ORDERS

Quotes for Products and Services from embeddedTS are invitations to tender and are subject to change at any time without notice. All Orders are subject to acceptance by embeddedTS. Contracts between Customer and embeddedTS are formed upon embeddedTS written acceptance or execution of Customer's Order and shall be subject to this Agreement.

All Orders including, but not limited to, Electronic Purchase Orders, for purchase of Products of quantity of 100 units and/or value of \$20K or greater, conformally coated Products, or for Products identified by embeddedTS as custom are non-cancelable, non-returnable ("NCNR"). embeddedTS may identify Products as custom or "NCNR" by various means including, but not limited to, quotes, Scope of Services or Products lists. Customer may not change, cancel or reschedule Orders for "NCNR" Products without embeddedTS's consent. Customers will be asked to sign an "NCNR" agreement when the Order is placed. There will also be a 50% deposit required on "NCNR" orders. embeddedTS reserves the right to ship  $\pm 3\%$  of the original order or release quantity for, conformally coated, custom or customized parts.

### 2. PRICES

Prices are subject to change at any time. Prices are subject to change on accepted orders due to raw material and/or labor price increase, change in exchange rate, change in foreign taxes and/or fees or quoting errors. Prices are for Products only and do not include taxes, shipping charges, freight, duties, and other charges or fees, such as fees for special packaging and labeling of the Products, permits, certificates, customs declarations and registration (collectively, "Additional Fees"). Customer is responsible for any Additional Fees.

Price breaks may be granted based on the volume of the order, if price breaks are offered on an order, delivery must be taken in no more than 2 shipments over a 90 day period. Any changes in delivery schedule may result in a price increase.

### 3. TERMS OF PAYMENT

Payment of the total invoice amount, without offset or deduction is due at the time of shipment. All orders must be pre-paid with Visa, MasterCard, American Express or wire transfer or shipped COD. NET 30 terms may be available for approved customers. NET 30 payments are due 30 days from invoice date (typically same as ship date) or as otherwise approved in writing by embeddedTS. On any past due invoice, embeddedTS may charge terms account or credit card account, (i) interest from the payment due date to the date of payment at 24% per annum, plus reasonable attorney fees and collection costs; or (ii) the maximum amount that is allowed under the applicable law if embeddedTS's interest rate is deemed invalid. At any time, embeddedTS may change the terms of Customer's credit, require financial data from Customer for verification of Customer's creditworthiness, require a bank guarantee or other security, or suspend any outstanding Orders of Customer on any of Customer's accounts. embeddedTS may apply payments to any of Customer's accounts. If Customer defaults on any payment



under this Agreement, embeddedTS may reschedule or cancel any outstanding delivery and declare all outstanding invoices due and payable immediately. Unless otherwise provided by applicable law, any credit issued by embeddedTS to Customer in respect of any of Customer's accounts will expire if unused for twelve (12) months following the date of issuance of such credit.

#### 4. DELIVERY AND TITLE

Unless otherwise specified by embeddedTS in writing, all deliveries by embeddedTS are EXW (EX Works INCOTERMS 2010) embeddedTS's warehouse located in Fountain Hills, AZ. Title shall pass to Customer upon delivery of the Products to the carrier. embeddedTS's delivery dates are estimates only and subject to timely receipt of raw materials by embeddedTS. Delivery date estimates cannot be made until after orders are accepted and all prepayment/deposit payments and executed "NCNR" agreements are received. embeddedTS is not liable for delays in delivery. embeddedTS reserves the right to make partial deliveries and Customer will accept delivery and pay for the Products delivered. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

#### 5. embeddedTS's LIMITED WARRANTY

As the manufacturer, embeddedTS warrants this product to be in good working order for a period of one year from date of purchase. If at any time within the one-year warranty period this product should fail, the manufacturer will repair or replace the product, at its option. This limited warranty does not cover damages resulting from lightning or other power surges, abuse, misuse, or unauthorized modifications including units conformally coated by a third party. embeddedTS will pass through to Customer any transferable Product warranties, indemnities, and remedies provided to embeddedTS by the suppliers, including any warranties and indemnities for intellectual property infringement. To the extent permitted by law, embeddedTS makes no other warranty, express or implied, such as warranty of merchantability, fitness for purpose or non-infringement. Customer's sole remedies for breach of embeddedTS's warranty are, at embeddedTS's choice: (i) repair the Products; (ii) replace the Products at no cost to Customer; or (iii) credit Customer the purchase price of the Products.

#### 6. PRODUCT RETURN

Customer may return Products to embeddedTS only with a return material authorization ("RMA") number issued by embeddedTS. RMA number should be requested via <https://www.embeddedTS.com/support/rma>. Customer must notify embeddedTS in writing of any damage to the outer packaging or the Products, shortage, or other discrepancies within 5 days after receipt of the shipment; otherwise, Customer is deemed to have accepted the Products and may not revoke acceptance. embeddedTS's warranty is generally limited to impairments with the function and performance of products. RMAs will be issued only for Visual Defects created solely by embeddedTS or the original manufacturer, and only if Customer satisfies the notice requirement. RMAs will not be granted for damage, shortage, or other discrepancy created by Customer, the carrier or freight provider, or any other third party. Product return pursuant to a warranty requires written notice from Customer to embeddedTS within the warranty period detailing the Product defect. Customer must return the Products to embeddedTS freight prepaid in original manufacturer's shipping cartons or equivalent, along with acceptable proof of purchase, within the warranty period and as specified in the RMA. At embeddedTS's discretion, embeddedTS will return all Products not eligible for return to Customer, freight collect, or hold Product for Customer's account at Customer's expense. All returns require a Return Merchandise Authorization (RMA) number. Authorized returns must be made within 15 days of the issue of a return authorization number.

#### 7. LIMITATION OF LIABILITY

To the extent permitted by law, neither embeddedTS nor its employees or agents are liable for and Customer is not entitled to any indirect, special, incidental or consequential damages (for example, loss of profits or revenue, loss of data, loss of use, rework, manufacturing expense, injury to reputation, or loss of Customers). To the extent permitted by applicable law, Customer's recovery from embeddedTS for any direct damages will not exceed the price of the Product at issue. Customer will indemnify, defend and



hold embeddedTS harmless from any claims based on: (i) embeddedTS's compliance with Customer's designs, specifications, or instructions, (ii) modification of any Product by anyone other than embeddedTS, or (iii) use of Products in combination with other products or in violation of clause 9 below.

## 8. FORCES BEYOND embeddedTS's CONTROL

Neither Party is liable for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control (for example: acts of nature, acts or omissions of the Customer, operational disruptions, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain materials through its regular sources).

## 9. USE OF PRODUCTS

Products are not authorized for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or serious property damage. If Customer uses or sells the Products for use in any such applications, Customer acknowledges that such use, sale, or non-compliance is at Customer's sole risk.

## 10. PRODUCT INFORMATION

embeddedTS is not responsible for typographical or other errors or omissions in Product information.

## 11. GENERAL

A. This Agreement shall be governed, construed, and enforced in accordance with the laws and courts of the State of Arizona will apply without reference to Arizona's conflict of laws principles. The United Nations Convention for the International Sale of Goods shall not apply.

B. Customer may not assign this Agreement without the prior written consent of embeddedTS, and embeddedTS's affiliates may perform embeddedTS's obligations under this Agreement. This Agreement is binding on successors and assigns.

C. This Agreement can only be signed or modified in writing by authorized representatives of both embeddedTS and Customer.

D. embeddedTS and Customer are independent contractors and agree that this Agreement does not establish a joint venture, agency relationship, or partnership.

E. embeddedTS's failure to object to any document, communication, or act of Customer will not be deemed a waiver of any of these terms and conditions.

F. The un-enforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.

G. Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses, and Customer will comply with such rights.

H. Customer and embeddedTS will comply with applicable laws and regulations.

I. The parties agree to use electronic signatures and agree that any electronic signatures will be legally valid, effective, and enforceable.

J. The most current version of these Terms and Conditions is available at: <https://www.embeddedTS.com/about/terms-and-conditions>. The Terms and Conditions available at this address at the time of order acceptance take precedence over any prior copies of these terms.

