

TERMS AND CONDITIONS OF SALE

FORM WPTC

THE WINPROBE CORPORATION'S OFFER TO SELL, AS STATED HEREIN, IS CONDITIONED UPON YOUR ASSENT TO THE TERMS AND CONDITIONS PRINTED ON THIS FORM. NO CONTRARY, ADDITIONAL OR DIFFERENT TERMS SHALL BE BINDING ON THE SELLER UNLESS ACCEPTED IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER. THE WINPROBE CORPORATION'S ACCEPTANCE OF ANY ORDER FROM YOU IS EXPRESSLY MADE CONDITIONAL ON YOUR CONSENT TO THESE TERMS AND CONDITIONS AND YOUR TAKING DELIVERY OF ALL OR ANY PART OF THE INVOICED PRODUCT IS DEEMED TO CONSTITUTE YOUR CONSENT.

1. PRICES AND CHARGES. (a). The prices for all goods (materials and services) to be furnished under any order are in United States dollars (unless otherwise agreed in writing by a duly authorized representative of Seller). (b). Unless otherwise agreed in writing, all prices and charges specified herein are subject to change without notice by Seller and Buyer shall pay Seller's prices for the goods in effect on the date of shipment by Seller. (c). Prices for material covered by a quotation are exclusive of federal, state, or municipal sales, excise, occupational, processing, use or similar taxes, imposed on Seller by reason of this sale. Such taxes shall be for Buyer's account, and paid by Buyer. Buyer may provide Seller with a tax exemption certificate acceptable to the taxing authorities. (d). All extra charges connected with, related to or involved in transportation, special handling and similar charges, shall be the sole responsibility of Buyer.

2. TERMS OF PAYMENT. (a). All terms of payment set forth here are subject to the approval of the Seller's Credit Department. (b). No discounts are allowed on taxes or freight charges. (c). Payment will be deemed to have been made when the funds are available for use by the Seller at the Seller's bank. (d). Any discounts indicated on the face of Seller's invoice to Buyer for prompt payment are applicable only when the payments have been made within the stated term. Unless otherwise specified on the face of Seller's invoice, the amount stated thereon becomes due and payable within thirty (30) days from the date of shipment. If in the judgment of Seller, the financial condition of Buyer at any time does not justify shipment on the terms of payment originally specified, Seller may require full or partial payment in advance or may ship C.O.D. (e). Any amounts not paid by the due date as indicated on the face of the Seller's invoice to Buyer shall be subject to a FINANCE CHARGE of 1-1/2% per month until paid, the rate of said FINANCE CHARGE being equivalent to an ANNUAL PERCENTAGE RATE of 18% per annum. In no event however, shall the rate of the said finance charge exceed the highest rate permitted by law. (f) All payments to Seller to be in United States dollars (unless otherwise agreed in writing by a duly authorized representative of Seller).

3. PASSAGE OF TITLE, ROUTING. (a) Except as otherwise expressly stated, all deliveries will be F.O.B. Seller's plant via a carrier selected by Buyer but acceptable to Seller. In all such cases, risk of loss or damage will pass to Buyer upon Seller's delivery of the products to carrier for shipment to Buyer and no loss or damage will relieve Buyer of any obligation including payment for lost or damaged products. If shipment is delayed at Buyer's request, Seller may invoice Buyer for such goods, upon the date that Seller is prepared to make shipment. (b). Title to the products shall transfer to the Buyer only when the amount stated in the Seller's invoice to Buyer has been transferred to Seller and is available for use by the Seller at the Seller's bank. Buyer grants the Seller the right to enter Buyer's premises and reclaim products if payment has not been made within the term indicated on Seller's invoice to Buyer.

4. PROPERTY RIGHTS. Seller retains ownership of its models, patterns, dies, molds, jugs, fixtures, tools, software and hardware made for furnishing any goods to Buyer and retains ownership of its proprietary data (including without limitation, design engineering, software programs and technical information – whether or not patent able – and trade secret information, such as secrets contained in manufacturing methods or processes, treatment and chemical compositions, and plant layout and tooling). Buyer shall not use any such proprietary data obtained by Buyer, nor shall Buyer disclose such proprietary data to any third party without the previous written approval of an authorized officer of Seller.

5. FORCE MAJEURE. Seller shall not be liable for any loss, cost, expense or damage if the fulfillment by Seller of any order or any other obligation to Buyer is delayed or prevented due to any cause beyond Seller's reasonable control including but not limited to fires, floods, strikes, labor disputes, accidents, acts of God, acts of civil or military authority, priorities required or requested by any governmental authority, transportation delays, restrictions imposed by Federal or State law, or regulations, Seller's inability to secure adequate materials, manufacturing facilities or labor. In the event of any delay due to such causes or other difficulties, whether or not similar in nature to any of those enumerated,

the delivery dates shall be extended for a period equal to the extent of the delay so incurred.

6. INSPECTION AND NOTICE OF DISCREPANCIES. Buyer shall inspect the goods received with ten (10) days of receipt and shall notify Seller in writing of any and all discrepancies from Seller's published product specifications within ten (10) days of such inspection.

7. WARRANTY RIGHTS AND LIMITATIONS. Seller warrants that goods shall be free from defects in materials or workmanship for a period of thirteen (13) months following the date of shipment. THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SPECIFIED HEREIN. Seller's liability for defective goods shall be limited solely to the replacement, repair or credit against the purchase price, of such goods. To exercise these rights, Buyer shall first give written notice to the Seller that the goods are defective and shall immediately discontinue all further use of such products. The products shall be held in Buyer's possession until receipt of Seller's formal Return Material Authorization (RMA), and all returns shall be in accordance with Seller's RMA instructions and Buyer shall be responsible for returning product to Seller's designated service center. Seller expressly disclaims all warranties and representations concerning components manufactured by others, except that Seller shall assign as permitted, any existing warranty from the manufacturers. Except as provided in this Section 6, Seller will not be liable for any loss, injury or damages to persons or property resulting from defects in the goods, nor shall Seller be liable for direct, indirect, special or consequential damages of any kind sustained by the Buyer from any cause. Any suit for breach of the warranty provided in the Section 8 shall be brought not later than one year following the breach.

8. CANCELLATIONS. In the event Buyer terminates order, Seller shall be entitled to recover any and all damages provided by law.

9. RESTOCKING. A restocking charge in the amount of 15% plus any required service fee to return the product to functional will be made on any product returned by the Buyer and accepted by the Seller for credit.

10. SOFTWARE. Installation of any unauthorized software or alteration of the factory settings on the PC or allowing installed software to update will void all warranty. WinProbe's current service charges will be applicable for any WinProbe personnel's time required to return system to functional.

11. STENOGRAPHIC ERROR. Stenographic and clerical errors or omissions are subject to correction.

12. EXPENSES OF SUIT. If suit or action is instituted in connection with any controversy arising out of this sale, the prevailing party in such suit or action shall be entitled to recover from and against the losing party, in addition to costs, such sums as the court may adjudge reasonable as attorney fees, including attorney fees on appeal.

13. GOVERNING LAW. The laws of the State of Florida shall apply to any controversy arising out of this sale. Jurisdiction and venue for any suit or action arising out of this sale shall be in the county and state from which the goods were shipped by Seller. The export or re-export of the goods may be subject to the applicable export laws of the country of origin of the goods, and Buyer agrees to comply in all respects with such laws.

14. ASSIGNMENT. No assignment of any order by Buyer shall be valid without Seller's prior written consent.

15. ENTIRE AGREEMENT: This writing expresses the entire agreement between the parties, and no other agreement, statement or representation shall be binding unless reduced to writing and signed by a duly authorized representative of the Seller.