

# PRECISION DIGITAL CORPORATION

## Terms & Conditions

For the purposes of these Stipulated Terms of Sale (“Stipulated Terms”), the term “Agreement” shall mean the agreement between Precision Digital Corporation (“Precision”) and its customer (“Customer”) resulting from Customer’s submitting, and Precision accepting, an order for Precision’s goods (“Goods”) or services (“Services”) (collectively, “Goods or Services”). Such Agreement shall be deemed to incorporate and be governed by these Stipulated Terms. **THESE STIPULATED TERMS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH MAY BE FOUND IN OR ON CUSTOMER’S ORDER OR IN ANY WRITTEN MATERIALS REFERRED TO IN CUSTOMER’S ORDER.** No different or additional terms or conditions in Customer’s order shall form part of the Agreement and are hereby rejected unless Precision expressly agrees to them in writing. If Customer retains Goods or Services received from Precision, or pays any invoice rendered to it for such Goods or Services, Buyer shall be conclusively deemed to have accepted these Stipulated Terms. Any failure by Precision to object to any provision found in any Customer order, correspondence or other communication shall not be construed as Precision agreeing to be bound by such provision or as a waiver of these Stipulated Terms.

1. **Quotations:** Any quotations furnished by Precision regarding price, specifications or delivery dates in respect of its Goods or Services are provided for informational purposes only and will not be binding on Precision until Precision has accepted Customer’s order and agreed on all technical requirements. Goods or Services quotations will terminate if Customer does not accept them within 60 days. All product descriptions, drawings, and any other information about its Goods or Services contained in Precision’s sale and marketing materials, such as brochures, catalogues, price sheets, advertisements and other literature are offered as a general description, are approximate only and for the general guidance and information of the Customer. Such information shall not constitute any express or implied warranties or representations about the Goods or Services nor shall they form part of any Agreement.

2. **Orders:** In placing an order with Precision, Customer agrees that its order will be subject to these Stipulated Terms in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping or service delivery dates. No order shall be binding upon Precision unless and until the order has been accepted by Precision, even if submitted in response to a quotation by Precision. Customer may cancel or reschedule orders that have been accepted by Precision only with the written consent of Precision and upon payment of Precision’s then-existing cancellation or rescheduling charges. Precision shall have the right, without penalty or payment, to cancel any accepted order: (i) if Customer fails to make any payment when due to Precision under any invoice or order, (ii) if any act or omission of Customer unreasonably interferes with or delays Precision’s performance, or (iii) if Customer violates any of these Stipulated Terms. In the event of such cancellation, Precision shall be entitled to receive payment for its reasonable and proper cancellation charges.

**Order Cancellation:** Customer may cancel or reschedule orders that have been accepted by Precision and not yet shipped only with the written consent of Precision and upon payment of Precision’s then-existing cancellation or rescheduling charges. However, after Precision has acknowledged orders for the following product’s they are non-cancellable: Enclosures, Custom or Specially Modified Products. Orders in transit are non-cancellable.

**Prices and Taxes:** Prices are exclusive of all federal, state or local taxes applicable to Goods or Services sales, such as but not limited to sales, use or excise taxes, whether now existing or hereafter imposed. Such taxes may be added by Precision to the sales price or billed separately and shall be paid by Customer (unless Customer has previously provided Precision with any necessary tax exemption certificate).

4. **Shipment and Delivery:** All tangible goods will be shipped F.O.B. carrier at Precision’s premises in one or more lots, as determined by Precision. Unless specified otherwise by Customer and agreed by Precision, Precision will select the carrier and ship freight prepaid and charge Customer for the cost thereof, but in doing so Precision shall not be deemed to have assumed any liability in connection with the shipment. In no event shall any carrier be deemed to be the agent of Precision. Unless specified otherwise by Customer and agreed by Precision, Precision will insure the shipment at its full value and charge Customer for the cost thereof. On an international shipment, Customer must provide its own insurance unless otherwise specified by Customer and agreed by Precision. All risk of loss or damage to Goods sold hereunder, and title to such Goods, shall pass to Customer upon delivery thereof by Precision to the possession of the carrier, provided, however, that Precision reserves to itself a purchase money security interest in the Goods to secure payment of the price. Any claims for loss, damage or failure of delivery shall thereafter be asserted

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solely against the carrier. All Goods shall be conclusively deemed to have been fully inspected and accepted ten days after delivery unless before then notice of rejection is given in writing to Precision. Such acceptance shall constitute acknowledgment of Precision's full performance of all of its obligations under the Agreement except as stated otherwise in the Warranty section (Section 8).

**5. Payment Terms:** Each shipment shall be treated as a separate transaction and Customer will be invoiced on date of shipment. Unless otherwise provided for in Precision's invoice, payment terms for Goods or Services shall be net thirty (30) days from date of invoice. All invoices must be paid in full without any deduction, withholding, setoff or counterclaim. Precision shall have the right to require advance payment, and, if such a requirement is not satisfied, Precision may cancel the order or any remaining part of the order and charge reasonable cancellation fees which Customer agrees to pay. In the event Customer fails to pay any amount due hereunder when due, Precision may also recover, in addition to the amount due, interest thereon at the rate of 1.5% per month or, if less, the maximum lawful monthly interest rate that may be charged, together with its reasonable attorney's fees incurred in collecting such amounts. In addition, failure to comply with the payment terms may result in their revocation and being replaced with terms of cash in advance, credit card or a cash deposit.

**6. Credits and Returns:** Customer may return Goods only after obtaining a Return Materials Authorization form from Precision. Precision will have the sole discretion to determine the cause and responsibility for Goods returned to it. Credit for returned Goods other than those noted below will be at the sole discretion of Precision and to be eligible for credit must be:

- a. On the current price list and be of current design
- b. Unused and in their original packaging
- c. In salable condition as determined by Precision
- d. Returned freight prepaid
- e. Standard stock items

The following products are returnable only in the case of defect, Enclosures, Custom or Specially Modified Products. Once acknowledged, all sales for these products are final.

Other Precision products returned for reason other than repair are subject to a restocking fee.

- a. The minimum restocking fee is \$35 per unit.
- b. The amount of credit allowed for returned qualifying product will depend upon its age:
- c. A credit of 80% will be issued for product up to 60 days old.
- d. A credit of 50% will be issued for product up to 180 days old.
- e. No credit will be issued for product older than 180 days old.

**7. Product Changes:** Precision may modify its product specifications provided the modifications do not adversely affect the performance of the Goods to be supplied under the Agreement. In addition, Precision may provide suitable substitutes for materials that are unobtainable or in short supply due to governmental regulation, supplier shortages or other reasons.

### **8. Product Warranties; Limitations; Exclusions:**

A. Precision warrants that all Goods shall be free from defects in material and workmanship under normal use for the period of time provided in Precision's standard warranty terms as found from time to time on its website ([www.predig.com](http://www.predig.com)) at the time of shipment of the Goods. It shall be Customer's responsibility to determine that Goods ordered by it is suitable for Customer's use and that such use complies with any applicable local, state or federal law. If Customer gives Precision written notice of any claimed defect in the Goods immediately upon discovery, obtains a return authorization as provided above, and any such Goods are returned to the original shipping point, transportation charges prepaid, within the relevant warranty period, and Precision determines to its satisfaction that

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such Goods are defective in material or workmanship, then Precision shall, at its option, repair or replace the Goods and pay the cost of return freight. Precision shall have reasonable time to make such repairs or to replace such Goods. Any repair or replacement of Goods shall not extend the warranty period. This warranty is limited to the period of time stated in Precision's standard warranty terms, as provided for above, without regard to whether any claimed defects were discoverable or latent on the date of shipment. Precision's warranty applies only to defects that arise out of the manufacture of the Goods and not to defects arising from other circumstances, such as, but not limited to, accident, misuse, unforeseeable use, neglect, alteration, or improper installation, adjustment, repair, or testing.

B. Customer's failure to pay as and when due any invoice or any portion thereof for Goods or Services sold under the Agreement or otherwise, shall allow Precision to terminate and void all warranties and remedies granted under this Section 8.

C. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS OR SERVICES AND ANY DEFECTS THEREIN OF ANY NATURE WHATEVER, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ITS CHOICE AND USE OF ANY PARTICULAR GOODS OR SERVICES PURCHASED FROM PRECISION AND PRECISION SHALL NOT BE LIABLE FOR ANY ADVICE IT MAY HAVE GIVEN CUSTOMER OR ANY FAILURE TO PROVIDE SUCH ADVICE REGARDING THE GOODS OR SERVICES OR CUSTOMER'S USE OF THE SAME. IN NO EVENT SHALL PRECISION BE LIABLE TO CUSTOMER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND CUSTOMER HEREBY WAIVES ANY SUCH CLAIMS. PRECISION'S SOLE AND EXCLUSIVE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE GOODS OR SERVICES OR ANYTHING DONE IN CONNECTION WITH THIS AGREEMENT, IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL BE AS SET FORTH IN SECTION 8A HEREOF (SUBJECT TO FURTHER LIMITATION AS PROVIDED IN SECTION 8B HEREOF IF APPLICABLE). IT IS AGREED THAT THE WARRANTY AND EXCLUSIVE REMEDY PROVIDED FOR HEREIN SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE (AS THAT TERM IS USED IN THE UNIFORM COMMERCIAL CODE) IF PRECISION REMAINS WILLING TO REPAIR OR REPLACE DEFECTIVE GOODS OR SERVICES (AS DESCRIBED IN SUBSECTION 8A) WITHIN A COMMERCIALY REASONABLE TIME AFTER CUSTOMER RECEIVES SUCH GOODS OR SERVICES IN ACCORDANCE WITH THIS AGREEMENT. CUSTOMER SPECIFICALLY ACKNOWLEDGES THAT PRECISION'S PRICE FOR THE GOODS OR SERVICES IS BASED UPON THE LIMITATIONS OF PRECISION'S LIABILITY AS SET FORTH IN THIS AGREEMENT.**

**9. Limitation of Liability and Customer Indemnity: REGARDLESS OF THE FORM OF ACTION, PRECISION SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF THE SALE OF ITS GOODS OR SERVICES TO CUSTOMER OR ARISING OUT OF ANY UNDERTAKING IN CONNECTION WITH THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF GOODWILL, PROFITS, BUSINESS OR USE. NOR SHALL PRECISION BE LIABLE FOR CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO CUSTOMER OR PRECISION. CUSTOMER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF PRECISION'S GOODS OR SERVICES, OR ARISING OUT OF ANY OTHER UNDERTAKING IN CONNECTION WITH THE AGREEMENT OR SUCH GOODS OR SERVICES, SHALL BE FOR DAMAGES. NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON THE AGREEMENT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, NEGLIGENCE, AND WARRANTY), REGULATORY OR STATUTORY PROVISIONS, INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL BE ALLOWED IN ANY**

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### **AMOUNT GREATER THAN THE PURCHASE PRICE OF THE GOODS OR SERVICES IN RESPECT OF WHICH DAMAGES ARE CLAIMED.**

Customer shall hold harmless and indemnify Precision, its employees, agents, officers, parents, affiliates, subsidiaries and insurers from and against any and all claims, damages, liabilities, losses, and lawsuits, including costs and expenses in connection therewith, for injury to or death of any persons or loss of any property whatsoever, caused in any manner by Customer's possession, use or operation of Goods or Services.

10. **Patents:** Subject to the terms of this Section 10, Precision agrees to defend any suit or proceeding brought against Customer if and to the extent it is based on a claim that any Goods manufactured by Precision infringes on account of its construction or design a United States patent, and shall indemnify Customer against all costs, damages and expenses finally awarded against Customer in such action. This defense and indemnity undertaking is conditioned upon Customer notifying Precision promptly in writing of any such claim and giving Precision full and complete authority, information and assistance for the defense of such claim and provided that Precision shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If as a result of construction or design any such Goods are held directly to infringe any United States patent and the use of said Goods is enjoined, or in case any Goods may, in the opinion of Precision, be held to infringe, Precision may, at its expense and option, either (a) procure for Customer the right to continue using said Goods, (b) replace said Goods with a suitable non-infringing product, or (c) refund the purchase price of said Goods, less depreciation at twenty percent (20%) per year. Precision shall not be liable for any cost or expense incurred without Precision's written authorization. If the claimed infringement arises out of compliance with Customer's specification, or from a combination of the subject Goods with or an addition to other products not manufactured or developed by Precision, or from a modification of the Goods after delivery, or from the use of Goods in ways not contemplated by Precision or approved in writing by Precision, Precision shall not be obligated to defend or to indemnify Customer or be liable for any costs and damages associated with such claim.

### **THE FOREGOING STATES THE ENTIRE LIABILITY OF PRECISION, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE SAID GOODS.**

11. **Export:** Regardless of any Customer disclosure to Precision regarding the ultimate destination of Precision's Goods, Customer shall not export, either directly or indirectly, any Precision product, or any system incorporating said product in contravention of any relevant statute or regulation and without first obtaining all necessary licenses and permits from the United States Department of Commerce, Department of State and / or any other relevant agencies or departments of the United States government.

12. **Software:** Title to all software, firmware, programming routines, and documentation thereof that is included in any product supplied by Precision for use with the Goods, and of all copies thereof made by Customer (collectively "software") shall be retained by Precision. In such cases, Customer is granted a non-exclusive and non-transferable license to use such software solely for use with the Goods. Notwithstanding Section 8, Precision does not warrant that operation of software will be completely uninterrupted or error free or that all program errors will be corrected. Without limitation to the generality of Section 8, Precision shall not be responsible for the performance of any Customer custom software or firmware, configuration information, or memory data contained in, stored on, or integrated with any Goods returned to Precision pursuant to this warranty.

13. **Non-Waiver; Remedies:** No waiver of any breach of these Stipulated Terms shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the Agreement. Precision's rights and remedies, whether evidenced hereby or by any other agreement or document, shall be nonexclusive and cumulative and may be exercised concurrently or singularly.



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14. **Applicable Law and Actions to Recover Damages:** This Agreement shall be construed and enforced under the laws of the Commonwealth of Massachusetts without regard to its conflicts of law principles. The United Nations Convention on the International Sale of Goods (CISG) shall not apply to this Agreement. If any provision of these Stipulated Terms is held to be unenforceable, it shall not affect the enforceability of any other provision. In the event of any dispute regarding these Stipulated Terms, Customer and Precision shall meet at an executive level to attempt to resolve differences before any legal proceedings may be commenced. Any action Customer brings against Precision arising out of the Agreement or Customer's purchase and use of the Goods or Services must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such Goods or the delivery of such Services to Customer, as applicable. Precision and Customer each agree that (i) any litigation arising out of an unresolved dispute or controversy between them in respect of these Stipulated Term or any order placed hereunder shall be litigated only in either the Federal District Court for the District of Massachusetts in Boston, Massachusetts or the Massachusetts Superior Court in Middlesex County, (ii) they hereby submit to the personal jurisdiction of such courts, and (iii) they waive any right they may have to contest the jurisdiction, venue, or authority of any such court.

15. **Force Majeuer:** Precision shall have no liability or responsibility for any delivery delays or failures that are caused, in whole or in part, by any events or circumstances beyond its reasonable control, such as but not limited to, war, sabotage, insurrection, terrorism, riot, civil disorder, act of a public enemy, failure or delay in transportation, act of any government agency, judicial action, labor dispute, strikes, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure. If any such contingency occurs, Precision may allocate production, resources and deliveries among Precision's customers as Precision determines in its reasonable judgment.

16. **Insolvency of the Customer:** In the event a receiver is appointed for the whole or any part of Customer's assets or business, or Customer ceases business operations, dissolves, becomes insolvent, or makes any arrangement with its creditors, Precision may, without prejudice to any other right or remedy available to Precision, treat any order accepted under this Agreement as repudiated and/or withhold any further supply of Goods or Services without any liability to Precision and, if any Goods or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous arrangement or agreement to the contrary.

17. **Purchase Money Security Interest:** Customer hereby grants to Precision a purchase money security interest in all Goods sold to Customer by Precision to secure Customer's punctual payment of all of its obligations hereunder. Customer authorizes Precision to take any and all action necessary to evidence and perfect such security interest such as, but not limited to, filing UCC financing statements, and Customer agrees to provide Precision with any information required to make any such filing.

18. **Assignment:** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives, and permitted assigns. The Agreement is personal to Customer, and Customer may not assign any of its rights or delegate any of its obligations or duties hereunder, in whole or in part, without the prior written consent of Precision which may be withheld for any reason.

19. **Complete Agreement; Modifications:** This Agreement constitutes the entire agreement between the parties relating to the sale of the Goods or Services and no modification of or addition to any provision hereof shall be binding upon Precision unless agreed to in writing by Precision.

20. **Notices:** All notices given under the Agreement shall be in writing, mailed by first class mail, certified or registered, or hand-delivered to the other party's address set forth in the accepted order, or to such other address as such party may designate from time to time by such notice.