

Product Purchase and Resell Terms and Conditions

The following Product Purchase and Resell Terms and Conditions (the "Terms") shall apply to all proposals, purchase agreements, estimates, invoices or quotes made, (the "Proposal" or "Quote") and purchase orders accepted by AeroVironment, Inc., ("AV"), electronically or otherwise, for provision of parts for use in AV's PosiCharge™ Products and related systems by AV or any of its authorized service providers ("Products" or "Parts") provided by AV to the customer identified in the accompanying Proposal or Quote ("Customer"). These Terms and the Proposal together form the agreement between AV and Customer ("Agreement"). These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms shall govern when in conflict with any of the terms and conditions contained in Customer's purchase order or other procurement documents issued by Customer. AV's Proposal, delivery of products, and acceptance of Customer's purchase order or other procurement documents is expressly conditioned upon Customer's acceptance of these Terms, irrespective of whether Customer accepts by a written acknowledgement, implication, or acceptance of and payment for Products ordered hereunder. AV's failure to object to provisions contained in any communication from Customer, or failure to enforce these Terms, shall not be deemed a waiver of these Terms or any provisions thereof. Any changes in these Terms must be specifically agreed to in writing by both parties before becoming binding on either party.

1. Sale of AV Products to Customer

- 1.1. Product Sales. AV shall sell to Customer Parts and such other equipment and accessories as may be agreed by the Parties from time-to-time (together, "Products") pursuant to Proposal made by AV or Purchase Orders placed by Customer and accepted from time-to-time by AV in accordance with the terms of this Agreement.
- 1.2. Price. AV's Proposal, including any electronic posting, constitutes an offer to sell Products upon the terms of this Agreement. Unless otherwise stated on the Proposal, the prices included in any Proposal: (i) shall be valid for a period of thirty (30) days from its date; (ii) are in U.S. Dollars payable by check, credit card, electronic transfer or wire transfer; and (iii) do not include (a) shipping or transportation charges unless specifically identified as a separate line item, or (b) sales, use, personal property or other taxes, including state and local privilege or excise taxes. All applicable charges will be included in AV's invoice as separate items, which Customer agrees to pay or, in the case of taxes, to supply appropriate tax exemption certificates in a form satisfactory to AV.
- 1.3. Payment. Customer agrees to pay all fees listed in the invoice. Unless otherwise stated on the Proposal, payment terms will be cash, letter of credit, electronic transfer or wire transfer in advance based on AV's Proposal. Invoices not paid when due shall be subject to an interest rate of the lesser of one and a half percent (1.5%), or the maximum legal rate, of the invoiced amount for each month they remain unpaid. If Customer is delinquent in payment to AV, AV may immediately stop shipment of Products and future shipping of Products until all delinquent amounts and late interest are paid. Additionally, AV may at its option recover all costs incurred by AV or its agent, including without limitation reasonable attorneys' fees, costs and expenses, in a collection action or any other legal action resulting from Customer's breach of this Agreement. AV may re-evaluate Customer's creditworthiness at any time, and modify or withdraw credit accordingly. Customer may not set off or recoup invoiced amounts or any portion thereof against sums that are due, may become due, or Customer claims to be due from AV.
- 1.4. Specifications. The Products shall be manufactured to AV's standard specifications as may be determined by AV from time-to-time.
- 1.5. AV Branded Products. The Products shall be branded "AV" or "PosiCharge".
- 1.6. Limitation Concerning Internet Sales. Not all PosiCharge parts will be available for sale via the internet. For such parts, Customer must submit a separate order to AV, but if Customer has previously purchased other parts from AV via the internet, Customer agrees that it will be bound by the purchase order number provided with the internet order, to facilitate AV's billing and receipt of payment.

2. Customer Resale

- 2.1. Resale Price. The sales price that Customer charges to its customers for Products shall be determined by Customer in its sole discretion, but AV may notify Customer of the manufacturer's suggested retail price (MSRP) for Products.
- 2.2. Return Policy. AV will accept returns of unopened Product within 90 days of purchase by Customer.

3. Marketing Cooperation

- 3.1. Customer Marketing and Sales Materials. AV shall provide to Customer appropriate marketing materials in digital format, and Customer shall be responsible for printing and distributing any advertising collateral for the Products at its own expense. Customer is responsible for executing drafts of any desired co-branded marketing materials (i.e. Customer brand and AV brand), and AV and Customer will mutually approve all final co-branded material prior to public or commercial use. All advertising collateral and merchandising shall be subject to prior written approval of AV prior to use. AV hereby grants Customer a limited, revocable, non-exclusive and non-transferable license to use AV's trademarks, brands and logos ("AV IP") for the sole use with AV-approved advertising collateral pursuant to this Agreement. Customer shall use commercially reasonable efforts to actively market and promote the Products using its sales channels and distribution network.

4. Confidentiality

- 4.1. The Parties recognize that each of them ("Receiving Party") may, during the course of this Agreement, gain knowledge of, have access to, and have otherwise disclosed to it certain nonpublic information that is proprietary to the other Party, its subsidiaries and its affiliates ("Disclosing Party") and which is of a secret or confidential nature ("Confidential Information"). The following information shall be considered the Confidential Information: this Agreement, and information, whether written, oral, visual or otherwise, concerning technologies, software, products, developments, specifications, inventions, designs, research and development programs, business plans, manufacturing, advertising programs, sales promotions, prices, complaints, budgets, forecasts, marketing, investment, management, financial condition and other business affairs.
- 4.2. The Receiving Party shall not disclose, publish, release, transfer or otherwise make available Confidential Information of the Disclosing Party in any form to, or for the use or benefit of, any third party except as necessary for purposes of performing obligations under this Agreement and provided that the Receiving Party shall ensure that each such third party is aware of and undertakes to maintain the secret or confidential nature of the Disclosing Party's Confidential Information.
- 4.3. The obligations of confidentiality shall not apply if:
 - (1) the Confidential Information is, or becomes (other than through a breach of this Agreement) generally known to the public;
 - (2) the Confidential Information was in the Receiving Party's possession prior to its disclosure by the Disclosing Party, as demonstrated

by the Receiving Party's written records;

- (3) the Confidential Information is developed independently by the Receiving Party without reliance on information or materials provided by the Disclosing Party, as demonstrated by the Receiving Party's written records; or
- (4) of the request for disclosure, cooperates with the Disclosing Party in obtaining a protective order or other remedy, and discloses only that portion of the Confidential Information which it is legally compelled to disclose.

4.4. Each Party acknowledges that the disclosure of the other Party's Confidential Information may result in irreparable injury to that Party and that such Party shall be entitled to seek injunctive relief in addition to any other legal or equitable remedies that may be available.

5. Termination

5.1. Either Party may terminate this Agreement effective immediately by notice in writing without liability to the other if the other is in material breach of this Agreement and, if such breach is remediable, such breach has not been remedied within fifteen (15) days of written notice.

5.2. Notwithstanding the provisions of Section 5.1, either Party may terminate this Agreement effective immediately by notice in writing in the event the other becomes insolvent or bankrupt, is placed into administration, receivership or liquidation, commences proceedings to be wound up, enters into any voluntary arrangement with its creditors, or on the happening of any similar event according to the laws of its domicile.

5.3. In the event of expiration or termination of this Agreement for any reason, unless otherwise directed by the other Party, Customer shall cease use of AV IP, AV shall cease use of the Customer IP (other than for Products in manufacture for accepted Purchase Order) and each Party shall return or destroy all the Confidential Information of the other Party and certify such return or destruction if requested to do so by the other Party.

5.4. In the even event this Agreement is terminated for any reason, Customer shall be responsible for any and all Purchase Orders accepted by AV prior to the date of termination.

6. Intellectual Property. All right, title and interest in and to intellectual property of any kind associated with the Products (other than Customer IP) is reserved to, and belongs to, AV. Customer agrees not to directly or indirectly disassemble, decode, peel components, decompile, modify, append, translate, copy, distribute, publicly display or otherwise reverse engineer or attempt to reverse engineer or derive source code from, or provide to third parties for such purpose, the Products or any portion thereof, or permit or encourage any third party to do so. Subject to the terms of this Agreement, AV hereby grants Customer a non-exclusive license to use the software embedded in the Products and any upgrades thereto (the "Software") solely (i) with the Products; (ii) as instructed in AV's printed installation and operation instructions.

7. Warranty Services and Parts. (a) Parts and Repairs Under Warranty. If Services are performed under warranty, the repairs and Parts shall be covered solely by the terms and duration of the existing applicable warranty and not the warranty period provided under subsection (b) below. AV reserves the right, in its sole discretion, to utilize used or reconditioned Parts in warranty repairs. (b) Parts and Repairs Not Under Warranty. If Services are performed or Parts are supplied outside of warranty, (i) AV may but is not required to offer Customer the option of utilizing new or reconditioned Parts, and (ii) AV warrants that its Services will be performed in a competent and workmanlike manner and that all new service or replacement Parts used in the Service or supplied to the Customer shall be free of defects in materials and workmanship for the longer of one (1) year from the date of installation or shipment of the Parts, or the period of the manufacturer's original warranty. This warranty covers replacement of the Part only and does not include labor or shipping costs for any replacement Part. This warranty does not cover replacement of expendable items such as fuses, switches and connectors shipped with or integrated into the Parts.

THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY AV WITH RESPECT TO PARTS, AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO AV IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT AV'S PARTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR CUSTOMER'S USE OR PURPOSE.

AV's liability under this warranty shall be limited to replacing, without charge, FOB AV's factory, any Parts. AV will not be liable for any costs of removal, disposal, installation, transportation, or any other charges which may arise in connection with a Parts warranty claim. AV will not be liable for damage or wear to Parts caused by abnormal operating conditions (including exposure to acid, chemical fumes, metallic dust or extreme temperatures), accident, abuse, misuse, unauthorized alteration or repair, or if Parts were not installed, operated or maintained in strict compliance with AV's printed installation and operating instructions. **AV is the final arbiter of the presence of facts that support a conclusion that the warranty is voided.**

To obtain service under this warranty, and prior to any Parts return to AV by the Customer, the defective Part must: 1) have been installed in strict compliance with AV's printed installation and operating instructions, and 2) have proof of purchase (including installation date), failure date, supporting installation and operation data.

8. Customer Indemnity. Customer shall indemnify and hold harmless AV, its officers, directors, customers, agents and employees against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit, arising out of or in any way connected with (a) any breaches of any of the provisions of this Agreement by Customer; (b) acts or omissions of Customer or its directors, officers, managers, employees or other agents related to this Agreement; (c) violations by Customer (or any of its directors, officers, managers, employees or agents) of any applicable law, regulation, or order; or (d) any claims related to AV's use of the Customer IP pursuant to this Agreement.

9. Force Majeure. Neither party shall be liable for any loss or damage resulting from failure or delay of performance due to unforeseen circumstances or causes beyond their control, including without limitation; strikes; riots; war; fire; flood; vandalism; sabotage; acts of God; weather-related transit or shipping delays; inability to obtain materials or manufacturing facilities or compliance with any law, regulation or order, whether valid or invalid of any cognizant government body whether domestic or foreign.

10. LIMITATION OF LIABILITY. TO THE EXTENT PERMITTED BY LAW, AV'S LIABILITY FOR CUSTOMER'S DAMAGES WILL, IN THE AGGREGATE, NOT EXCEED THE VALUE OF THE AGREEMENT. IN NO EVENT SHALL AV OR THE CUSTOMER BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, ECONOMIC OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFITS, SUFFERED OR INCURRED, AS A RESULT OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF THIS AGREEMENT. LIMITATIONS OF LIABILITY PROVIDED HEREIN WILL APPLY WHETHER THE LIABILITY ARISES UNDER BREACH OF CONTRACT OR WARRANTY; TORT, INCLUDING NEGLIGENCE; STRICT LIABILITY; STATUTORY LIABILITY; OR ANY OTHER CAUSE OF ACTION, AND SHALL INCLUDE A PARTY'S AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, AND SUBCONTRACTORS.

11. Other.
- 11.1. Insurance. Customer represents and warrants that during the term of this Agreement it shall maintain insurance coverage issued through an insurance company with an A.M. Best rating of AX or better and as is required by law or regulation as of the date of execution of this Agreement including (a) Workers' compensation and employer's liability the limits of which shall not be less than \$1,000,000 each accident or each employee; (b) general comprehensive commercial liability insurance (including contractual liability, personal injury, property damage, advertising liability, products/completed operations and independent contractors) the limits of which shall be not less than US \$1,000,000 per occurrence with a \$2,000,000 aggregate covering general comprehensive commercial liability (including contractual liability, personal injury, property damage, advertising liability, products/completed operations and independent contractors); (c) Automotive bodily injury and property damage liability insurance (covering all owned, hired and non- owned vehicles), the limits of which shall be not less than US \$2,000,000 combined single limit per occurrence; and (d) excess liability insurance the limits of which shall be not less than US \$10,000,000 per occurrence. Customer shall include AV as additional insured on the commercial general liability insurance policy. All certificates shall provide at least thirty (30) days advance written notice to AV prior to cancellation, termination or alteration of said insurance policies.
- 11.2. Independent Contractor. It is understood between the Parties that each Party is an independent contractor and is not an agent, employee, servant, partner or joint venture of the other Party. Neither Party shall have the right, power, or authority to assume or create any obligation on behalf of the other Party.
- 11.3. Severability. If any court of competent jurisdiction finds any provision of this Agreement to be unenforceable or invalid in whole or in part, such finding shall not affect the validity of the other provisions of this Agreement or the remainder of the provision in question.
- 11.4. Counterparts. This Agreement may be executed in several counterparts, each of which is to be considered an original but all of which taken together constitutes one and the same agreement. The Parties acknowledge and agree that signatures sent by facsimile or electronic copy are deemed and accepted by the Parties as originals.
- 11.5. No Waiver. The failure of either AV or Customer to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof.
- 11.6. Assignment. Customer may not assign this Agreement or any part thereof without the prior written consent of AV, except that it may be assigned without such consent to a wholly owned subsidiary or successor. AV may assign this Agreement at any time without consent of Customer.
- 11.7. Entire Agreement. This Agreement constitutes the entire, complete and fully integrated agreement between AV and Customer with respect to the subject matter hereof. Except as required by law, there are no other statements, representations, terms, covenants, warranties, guarantees, conditions, agreements or obligations in any way relating to AV's marketing or sale of Products, installation or services to Customer and Customer expressly disclaims any purported reliance on any prior oral and/or written representations. If any provision this Agreement is held invalid, void or unenforceable for any reason, that provision shall be severed and all other provisions of this Agreement shall remain valid to the maximum extent permissible by law. These Terms shall only be modified by a document signed by both AV and Customer.
- 11.8. Governing Law. This Agreement shall be governed by the laws of the State of California without regard for its conflict of law's provisions. Venue for any dispute regarding this Agreement or any resulting order shall be Los Angeles County, California, and Customer expressly consents to the jurisdiction of its state and federal courts in connection with this Agreement or any resulting order. Customer waives any other venue to which either party might be entitled by domicile or otherwise.