

STANDARD TERMS AND CONDITIONS OF SALE

ALL QUOTATIONS AND SALES BY MAGMA ARE SUBJECT TO THESE TERMS AND CONDITIONS.

1. **PRICE.** Magma reserves the right to implement standard price changes/increases at any time, which shall apply prospectively to Customer's purchases effective with Customer's next Purchase Order (PO) submitted after Magma provides Customer with written notice of such price change.

2. **FEES, SHIPPING, TAXES AND OTHER CHARGES.** Prices for Products do not include shipping from Magma's warehouse, insurance and similar costs, or sales, use, value-added, excise or other taxes. A standard shipping charge plus insurance is applied to each invoice based on the value and/or weight of the shipment. A one time processing fee will be charged to set up new accounts on credit terms. The fee schedule varies depending on the customer's location and may range from \$55 to \$500.

3. **PAYMENT TERMS.** All payments for Products shall be made in United States dollars. For the protection of both parties, credit card orders may require a security check concerning the ownership and validity of the credit card.

a. **Orders Inside the U.S.:** Magma requires prepayment for at least Customer's first three purchases. Several prepayment options may be available, at Magma's sole discretion, i.e. credit card, wire transfer, company check, or C.O.D. Magma reserves the right to hold an order pending check clearance.

Magma will consider extending credit after multiple purchases with a minimum combined total of \$7,500. If Customer is approved for credit, payment is due thirty (30) days from the invoice date or sooner as per the due date shown on the invoice. Customer may be subject to credit limits, as may be determined from time to time, at the sole discretion of Magma. Each shipment shall be invoiced and paid for when due, without regard to other scheduled deliveries. Magma reserves the right to utilize self-help remedies on past-due accounts, including without limitation, placing Customer's orders on credit hold. There will be a 4% processing fee for an open invoice that is paid via credit card. Additionally, Magma may at its discretion impose a late fee of 1½% monthly on any undisputed, past-due amount until the balance is paid. Customer is liable for all costs Magma may incur in collecting any undisputed, past-due balance, including without limitation, attorneys' fees and court costs.

Absent credit approval, shipments must be prepaid. Alternative payment methods are available only at Magma's discretion as confirmed by Magma in writing before shipment.

b. **Orders Outside the U.S.:** Magma accepts prepayment in U.S. dollars by wire transfer. Magma may also accept payment by credit card or check drawn in U.S. dollars, on a U.S. bank, at Magma's sole discretion. Magma reserves the right to hold an order pending check clearance. If paying by wire transfer, any related wire-transfer fees will be the Customer's sole responsibility.

Credit card orders shipped outside the U.S. must be shipped to the credit card billing address. Magma reserves the right to refuse offers of payment by credit card for any reason.

4. **PURCHASE ORDERS.** During the business relationship between Customer and Magma, Customer may place orders by submitting POs or other purchase documents to Magma, but in no event will Customer's PO supersede or control over these Terms and Conditions, nor is any PO binding on Magma unless Magma expressly accepts the terms in writing. Each PO should state (1) the quantity and description of Product ordered; (2) requested delivery schedule and method; (3) the applicable agreed Price; (4) the physical location to which the Products to which the Products are to be shipped; (5) address to which invoices are to be sent for payment; (6) any other information reasonably requested by Magma from time to time. Preprinted terms and conditions in any PO are null and void, as are additional or different terms, unless Magma specifically accepts them in writing with reference to these Terms and Conditions in the PO acceptance. Customer's POs or orders are not considered accepted until Magma indicates its acceptance in writing. Magma will acknowledge POs or orders within five (5) business days of receipt. If Customer does not receive acknowledgement of PO within five (5) business days, Customer should contact Magma to confirm receipt. These Terms and Conditions also supersede any conflict in any Incoterms (International Commercial Terms) convention or interpretive document, regardless of the issuing institution.

5. **PACKAGING AND DELIVERY.** All Products will be suitably packed, marked and shipped in accordance with common carrier and other applicable requirements. All deliveries of Products are shipped FOB Origin, San Diego, CA. Title to all Products, and all risk of loss of or damage to Products shall pass to Customer, upon shipment of the Products from Magma's dock.

6. **SCHEDULING.** Subject to the provisions below, Customer may delay delivery of any Products which are on order and scheduled for shipment more than thirty (30) days after receipt of Customer's PO change order, for a maximum deferral of ninety (90) days. Only one (1) such PO change order shall be accepted per scheduled shipment. Products covered by accepted POs may be rescheduled as follows:

# of days prior to the scheduled shipment date that PO change order is received	% of units of Product which may be rescheduled
0 – 30	None
31 – 60	25%
61 – 90	50%
91+	100%

7. **PARTIAL SHIPMENT.** Magma may make partial shipments of Products. Partial shipments shall be separately invoiced and shall be paid for when due. Delay in shipment or delivery of any particular installment shall not relieve Customer of its obligation to accept and pay for subsequent installments.

8. **WARRANTY AND LIABILITY LIMITATION.** Products sold under these Terms and Conditions are covered by Magma's Standard Warranty and Repair Policy, which may be amended from time to time in Magma's sole discretion and which is available online at www.magma.com, which constitutes

Customer's sole remedy for any Product defect. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND MAGMA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT. *Magma's sole liability, and Customer's sole remedy, in contract, tort, or otherwise, shall be limited to repair or replacement of defective Product. Magma will not be liable for indirect, direct, special, punitive, or consequential damages of any kind, including loss of use, loss or damage to other equipment, or lost profits arising out of or in connection with use of the Product, even if Magma has been advised of the possibility of such damages. In some jurisdictions, the foregoing disclaimers or limitations on damages are prohibited or limited by law, so they may not apply to Customer.*

9. **COMPLIANCE WITH LAWS, ETHICAL PRACTICES.**

Magma and Customer will follow and comply with all applicable governmental laws, regulations, and orders in the sale and purchase of any Products. Customer will not export or re-export the Products except in full compliance with all applicable laws and regulations. Customer acknowledges it is solely responsible for complying with the Export Administration Act provisions concerning anti-boycott compliance, and that Customer is prohibited from taking or knowingly agreeing to take any of the actions contained in such Act, in either United States interstate or foreign commerce, with the intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country friendly to the United States. Customer certifies that it is not on the U.S. Commerce Department's Denied Party or Entity List or the Unverified Parties List and agrees that it will not sell or distribute any Products to any party on such lists. Customer agrees and warrants that in performing its obligations under these Terms and Conditions, it will not take any action rendering Magma liable for violation of the United States Foreign Corrupt Practices Act, which prohibits offering, giving, or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party, or instrumentality of these organizations, in order to assist it or Magma in obtaining or retaining business. Customer will indemnify and hold Magma harmless from all fees, fines, or other damages imposed on or suffered by Magma due to Customer's failure to comply with this section.

10. **NO LICENSE OR SUPPORT.**

These Terms and Conditions relates solely to the purchase and sale of Products and no right or license to any intellectual property, or any maintenance, support or service obligation is intended or implied hereby. All Magma software not embedded in the Products may be licensed by separate agreement. Hardware and software maintenance or support is also available by separate agreement.

11. **DISPUTE RESOLUTION.**

Except in pursuit of equitable relief, before resorting to legal action, the parties will first seek alternative means of dispute resolution, including but not limited to, bi-lateral management meetings, non-binding mediation and/or arbitration. In a legal action or arbitration brought to enforce or interpret these Terms and Conditions, the prevailing party will be entitled to recover from the other all costs and

reasonable attorneys' fees so incurred. All parties consent to exclusive venue and jurisdiction in the State of California, and laws of California in the United States, for any matter arising out of these Terms and Conditions. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

12. **FORCE MAJEURE.**

Neither party will be liable or responsible to the other party hereunder for delay or failure to perform any of its obligations, other than a duty to pay money, due to events beyond the party's commercially reasonable control, including acts of God, wars, terrorism, riots, strikes and the like.

13. **NOTICES.**

All notices permitted hereunder must be written and made by personal delivery or certified or registered mail (return receipt requested), and are deemed given on the date confirmed by the written delivery receipt generated by the courier delivering the notice. Notices must be given at the parties' addresses below, which may be changed for notice purposes by giving the other written notice of a new address.

14. **WAIVER.**

Waiver or failure of party to exercise in any respect any right provided for herein shall not be later deemed a waiver nor prevent a party from strictly enforcing any right at a later time.

15. **SEVERABILITY, MODIFICATION.**

If any term or provision of these Terms and Conditions is held invalid or unenforceable by a court of competent jurisdiction, these Terms and Conditions shall remain otherwise unaffected and fully enforceable. No changes or modifications to these Terms and Conditions shall be binding upon Magma unless signed by an authorized officer of Magma in an addendum hereto, except that Magma may, from time to time, reasonably amend these standard Terms and Conditions, and such amendments shall be binding upon Customer.

16. **ASSIGNMENT.**

Customer may not assign these Terms and Conditions without Magma's prior written consent, which will not be unreasonably withheld or delayed. Any assignee must assume all obligations of these Terms and Conditions and any POs pending on the date of assignment, but an assignee must submit a new credit application and does not receive Customer's credit terms.

17. **INTEGRATION.**

These Terms and Conditions express the parties' entire understanding concerning this subject matter, and supersede and merge all prior written or oral proposals, agreements or understandings.

Accepted and Agreed to:

Customer Name: _____

Signature: _____

Title: _____

Date: _____

Please fax form to (858) 530-2733 or email to sales@magma.com .