



24400 Highland Rd
Richmond Heights OH 44143
216-377-5160 (Phone)
<http://www.omnisystem.com>

OMNI SYSTEMS, INC. STANDARD TERMS AND CONDITIONS OF SALE

This document sets forth the terms and conditions for the sale by OMNI Systems, Inc., 24400 Highland Rd., Richmond Hts., Ohio 44143 ("Omni") of Products or Services to Customer.

I. Offer and Acceptance.

- A. Omni's quotation constitutes an offer for the sale of Products or Services (the "Offer"). Unless otherwise specified in the Offer, or some other document signed by Omni, the terms and conditions of sale set forth in this document ("Omni's Terms") apply to all Products and Services sold or provided by Omni.
- B. Any purchase order or other form of acceptance issued by Customer shall result in a contract for the purchase of the Products or Services at the price quoted in the Offer. Customer shall be deemed to have accepted any of Omni's Terms to which Customer has not specifically objected. Customer's issuance of a purchase order which purports to reject some or all of Omni's Terms by virtue of standard form language shall not be sufficient objection. Customer shall be required to set forth each objection to Omni's Terms in a separate writing signed and dated by Customer and delivered to Omni prior to or contemporaneous with Customer's purchase order or other form of acceptance. Omni's failure to object to provisions in any purchase order, or other communication from Customer (including, without limitation, penalty clauses of any kind), shall not be a waiver of Omni's Terms, nor an acceptance by Omni of any such provisions. Any terms in Customer's purchase order or any other document of acceptance which are different from or additional to Omni's Terms are hereby rejected unless specifically accepted by Omni in a separate document signed by both Customer and Omni, regardless of whether such other terms would materially alter the terms of this document. No course of dealing, custom or usage, which is contrary to Omni's Terms shall apply.
- C. Omni reserves the right to correct any typographical or clerical errors in prices, specifications, quotations, or acknowledgments.
- D. D. The minimum purchase order amount for labels is \$1500 per line item. Purchase orders for all other Products or Services that total less than \$1500 shall be assessed a processing fee.

II. Financial Condition.

At Omni's request, Customer will furnish sufficient information to enable Omni to assess Customer's creditworthiness. Omni may, in its discretion, require full or partial payment in advance.

III. Prices.

- A. Prices are subject to change without prior notification, are collect from point of shipment, and do not include freight, delivery charges, taxes (sales, excise, use, ad valorem, etc.) or any export or import duties. Those charges may be prepaid by Omni and added to Customer's invoice.
- B. Omni will charge Customer Omni's current rates for tooling, plates, proofs, alterations, digital and soft proofs, etc. ("tooling"). Customer shall be responsible for all reasonable resharpener and storage expenses associated with tooling.

IV. Shipment, Delivery, and Inspection.

- A. Omni shall select the method and carrier for delivery of all Products. Risk of loss or damage to the Products shall pass from Omni to Customer upon delivery to a carrier at point of shipment.
- B. Any shipment, delivery, or performance date stated in the Offer or other contract document is approximate only and does not constitute any guarantee of shipment, delivery, or performance on any particular date. Customer may request expedited handling or shipment, but will be charged Omni's then current expedite fee.
- C. Time shall not be of the essence of this Agreement.
- D. Customer shall inspect and accept or reject Products delivered by or for Omni within 96 hours after delivery to Customer's facility. All products delivered shall be conclusively deemed accepted and to conform to contract requirements unless rejection is made or specific objection or notice of non-conformity is given in writing within such 96 hour period.
- E. Prior to returning any Products to Omni, Customer must obtain a valid RMA number from Omni. Omni shall have no obligation with respect to any Products returned without a valid RMA number. Omni may refuse any Products returned without a valid RMA number or discard them.

V. Payments, Title, and Security Interests.

- A. All payments shall be without deductions for back-charges, other accounts between Omni and Customer, and the like, which shall be settled independently of the payment of the invoice. Payment shall not prejudice claims for omissions or shortages in shipment, but no such claim will be allowed unless made in writing within 96 hours after receipt of the applicable shipment by Customer.
- B. Payments shall be due 30 days from the date of Omni's invoice, unless alternate terms have been agreed upon in writing. Omni may charge interest on any balance due beyond 30 days (or alternative agreed upon terms as stated above) at the rate of one and one-half (1½%) percent per month. Any discounts for early payment that may be offered by Omni are valid only if payment is received by Omni within the specified and agreed upon time for early payment.
- C. Notwithstanding that risk of loss passes to Customer upon shipment, title shall not pass to Customer and Omni shall have a security interest in all Products until Omni receives payment in full. At the request of Omni, Customer shall sign all financing statements and other documents required to protect Omni's security interest.
- D. Title and risk of loss to any tooling shall pass to Customer upon payment in full, even if the tooling remains in Omni's possession. Customer shall be responsible for all reasonable resharpener and storage expenses associated with the tooling.

- E. Upon termination or expiration of the parties' business relationship, or the contract to which Omni's Terms apply, whichever is sooner, Customer shall purchase from Omni all goods in Omni's inventory that have been produced or acquired exclusively for Customer's use.

VI. Delays.

- A. Omni shall not be liable for loss, damages, or non-performance resulting from delays in receipt of final specifications or instructions from Customer, changes in specifications, force majeure, including but not limited to strikes, labor disturbances, material shortages, nonmanufacturing conditions, delays or failures of carriers or communication, epidemics, fire, flood, storms, accident, riot, war and invasion, governmental requisition or priorities, acts of God, or other causes beyond Omni's reasonable control.
- B. In the event of such delay, the delivery date shall be extended for a period equal to the time lost by reason of the delay. Omni shall undertake to notify the Customer promptly of any significant delay and will specify the revised delivery date as soon as practical. IN NO EVENT SHALL OMNI BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF A DELAY OR FAILURE TO DELIVER.
- C. If shipment is delayed or extended by Customer, Customer shall arrange for and notify Omni of the place or places to which Omni shall ship the Products covered by the order for warehousing or storage at Customer's expense and all risk of loss or damage to the Products shall be borne by Customer. If Customer is unwilling or unable to promptly arrange for warehousing or storage facility, Omni may do so at Customer's expense. Customer agrees to pay any and all storage charges so incurred, and Omni's invoice which shall issue upon shipment of Products to the place of storage.

VII. Cancellation.

Customer may cancel an order only with Omni's consent and upon payment to Omni of all costs incurred after acceptance of the order including the cost of tooling and plates, work in process, finished goods, inventory and any expedite fees associated with the cancelled order.

VIII. Product Design.

Omni reserves the right to make changes and improvements in the design and specifications of its Products without notice or obligation to Customer.

IX. Warranty; Disclaimers and Limitation of Liability.

- A. Omni warrants Products to be free from defects in material and workmanship under normal use and operation for a period of one hundred twenty days after date of shipment or delivery to Customer. Omni warrants that any services provided pursuant to this Agreement shall conform to industry standards. Omni's warranties do not apply to damage resulting from unauthorized installation, accident, casualty, alteration, or misuse. Omni's warranties will be void if the Products have been altered or modified by other than Omni or if the Products have not been properly stored, installed and maintained within the limits specified by Omni. Entire Warranty: OMNI MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND OMNI EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE EXPRESSLY EXCLUDED.

- B. Customer's sole and exclusive remedy for breach of the foregoing warranties shall be the repair or replacement of defective Products or re-performance of defective Services, or, at Omni's option, to refund the purchase price; provided that Customer promptly sends to Omni notice of defect and satisfactory proof thereof, and in the event of repair or replacement, returns the product to Omni, freight prepaid. Defective Products replaced by Omni shall become the property of the Omni. Repaired or replacement Products will be shipped to Customer FOB point of shipment.
- C. If the Product sold is not manufactured by Omni, Omni will extend to the Customer the same warranty protection Omni receives from the original manufacturer.
- D. Omni is not responsible for any charges relating to warranty work that have not been authorized by Omni in writing.
- E. If Omni, without separate compensation therefor, furnishes Customer with advice or other assistance concerning any product supplied hereunder or any system or equipment in which any such product may be installed which is not required hereunder, the furnishing of such advice or assistance will not subject Omni to any liability whether in contract, tort (including negligence and strict liability) or otherwise.
- F. **UNDER NO CIRCUMSTANCES SHALL OMNI BE LIABLE TO CUSTOMER FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MATERIAL OR OTHERWISE, OR FROM ANY ACTS OR OMISSIONS OF OMNI'S EMPLOYEES OR AGENTS, TORTIOUS OR OTHERWISE. IN NO EVENT WILL OMNI BE LIABLE TO CUSTOMER, REGARDLESS OF THE NATURE OF THE CLAIM, FOR ANY AMOUNT THAT EXCEEDS THE AMOUNT PAID BY CUSTOMER TO OMNI DURING THE TWELVE MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.**

X. Disclosure of Information.

Any information, suggestions or ideas given by the Customer to Omni in connection with Omni's performance hereunder are not secret or submitted in confidence except as may be otherwise provided in writing, signed by Omni.

XI. Assignment.

No right accruing to the Customer by virtue of the manufacturer/purchaser relationship between Omni and the Customer nor any duty of Omni resulting from that relationship shall be assignable without Omni's prior written consent.

XII. Severability.

Invalidity of any provision of Omni's Terms shall not affect the validity of any other provision hereof and any invalid provision shall be severed from the valid provisions.

XIII. Non-Waiver.

No failure by Omni to exercise any right accruing to it by virtue of the manufacturer/purchaser relationship or under any contract of sale entered into with Customer shall operate as a waiver thereof or preclude the exercise of any other right or privilege by Omni.

XIV. Notice.

All notices and demands to Omni shall be in writing and shall be sent via: (a) registered mail, return receipt requested; (b) electronic transmission with delivery confirmation; or (c) overnight express courier service which provides a delivery receipt, and shall be deemed complete upon receipt. Notice to Omni shall be sent to the following address:

Omni Systems, Inc.
24400 Richmond Rd.
Cleveland, OH 44143
Attn: Adam DeFrancesco
Fax: 216-377-5165
Phone: 216-377-5164

Omni may give notice to Customer in any means reasonably designed to reach Customer in the normal course of business.

XV. Entire Agreement and Amendments.

There are no other Terms and Conditions applicable to the purchase and sale of Omni's Products or Services other than those contained in the Offer (including any specifications or other documents incorporated by reference in the Offer or invoice). No modification, amendment, waiver or other change of any provision of Omni's Terms shall be binding on Omni without Omni's written consent.

XVI. Limitation of Actions.

Any action for a breach of contract arising out of Omni's acceptance of Customer's order or arising out of Customer's acceptance of Product supplied must be commenced within one year after the cause of action has accrued.

XVII. Governing Law; Remedies.

- A. The rights and obligations of the Customer and Omni, and the construction and effect of any contract formed between them shall be governed by the laws of the State of Ohio. All disputes arising under this Agreement or out of the relationship between Omni and Customer shall be resolved in state or federal court located in Cuyahoga County, Ohio. Omni shall be entitled to recover all fees and costs it incurs in any litigation between the parties, provided that Omni is the prevailing party in the litigation.
- B. If Customer fails to fulfill its terms of payment of any invoice or if the financial or business condition or responsibility of the Customer shall become impaired or unsatisfactory to the Omni, Omni may suspend its performance, without prejudice to any other legal or equitable remedy, until past due payments are made and satisfactory assurance of payment is received.

XVIII. Operating Directions.

- A. Customer shall comply with and require its agents and employees to comply with all directions, safety notices, warnings, and other instructions furnished by Omni, and shall use and require its agents and employees to use reasonable care in the use of the Products.

- B. Omni shall have no obligation or liability for any failure of Customer to observe the provisions of this section, or for any injury or damage caused, in whole or in part, by Customer's failure to comply with applicable federal, state, or local safety requirements.