

## **PREFERRED SOURCE TERMS AND CONDITIONS**

1. Definitions. "Products" is defined as hardware and software identified by Assignee in its then current catalog, conditioned upon vendor authorization, and baseline services identified hereunder that are associated with the provision of such hardware and/or software.

"Purchase Order" shall mean, individually or collectively, a purchase order, letter order, electronic transmission, of an offer to purchase Products received by Assignor from a Purchaser who has entered into an agreement with Assignor to purchase the Products ("Purchase Agreement").

2. Purchase Order Assignment. All purchase orders are subject to the provisions herein, and subject to vendor authorization of Assignor, for Products included in Assignee's catalog, access to which shall be provided to Assignor. Such assignment of Purchase Orders shall include (i) all of the right, title and interest of Assignor in and to the Purchase Orders, (ii) delegation of performance of all duties of Assignor under the Purchase Agreement with respect to the Purchase Order(s), and (iii) assignment of the contract right and delegation of obligations to: (a) sue or otherwise file claims to collect payments due for the Products under the assigned Purchase Order(s), and to enforce any other remedies under the Purchase Agreement concerning the assigned Purchase Order(s), (b) defend against any claim or lawsuit to enforce any remedies under the Purchase Agreement with respect to the assigned Purchase Order (s), (c) settle, compromise or discontinue any proceedings to the extent pertaining to the Products, (d) furnish receipt for payments of the purchase price from the Purchaser for the Product(s) under the Purchase Order.

In addition to the requirements listed in the Preferred Source Purchaser Agreement, Assignor shall also include terms in the Purchase Agreement that permit Assignor to freely assign Purchase Orders. Assignee's acceptance of a Purchase Order shall not be deemed its agreement to accept any subsequent Purchase Orders or Assignor's agreement to assign subsequent Purchase Orders. Should Assignor or Purchaser terminate Purchase Agreement, Assignor will immediately notify Assignee and refrain from submitting Purchase Orders associated with that Purchaser.

3. Purchase Order Information. Notwithstanding the form of Purchase Order received by Assignor or its designate from its Purchaser, Assignor or its designate will, at a minimum, provide Assignee with the following information: (i) Purchaser account number or contract number, (ii) Manufacturer Name and Product description, (iii) Assignee SKU Number, (iv) quantity ordered, (v) price per item and total price, (vi) Purchaser ship to address, (vii) Purchaser billing address, (viii) Purchaser's designation on the face of the Order of the following words "IFSC FAO ASSIGNOR", and (ix) and other information as required by Assignee. Purchaser shall be responsible to Assignee for any restocking or other charges associated with an incorrect shipment to the extent caused by Purchaser's failure to accurately provide the above required order information.

Assignor agrees to provide Assignee a written copy of the Purchaser's Purchase Order in advance of order fulfillment.

4. Purchaser Contact and Coordination. The parties agree that Assignor will assist Assignee in coordinating contact with the Purchaser associated with activities contemplated by these terms. Assignor and Assignee agree that any communications concerning invoicing and collection of amounts due or disputes under a Purchase Order shall be between Assignee and the Purchaser. Notwithstanding Assignee's responsibility for invoicing and collections of amounts due, the parties agree that Assignor may assist in the collection of such amounts at its reasonable discretion and upon Assignee's request. Should these terms conflict with the Preferred Source Purchaser Agreement, the terms of the Preferred Source Purchaser Agreement shall govern.
5. Shipment Errors. If Assignee ships Product incorrectly (i.e. including but not limited to incorrect quantity, incorrect address, etc.,) to the Purchaser due solely to the failure of Assignor to provide Purchase Order information accurately from the Purchase Order to Assignee, then Assignor agrees to pay to Assignee a restocking fee of fifteen percent (15%) of the invoice price of product(s) associated with such error. In cases where such incorrectly shipped Product is lost, unrecoverable, damaged, or is in a condition that Assignee is unable to accept return and/or resell the Product for its original value, Assignee will look to Assignor to pay the full invoice

amount of the Product that was incorrectly shipped. In addition, Assignor agrees to assist Assignee in recovery of Product that was incorrectly shipped regardless of which party's actions caused the incorrect shipment.

6. Changes or Cancellations. Assignee shall look solely to Purchaser, in the event of any Purchase Order termination or change request. Excessive change requests prior to the order printing and/or excessive change requests to configuration orders caused by Purchaser or Assignor may be subject to additional fees.
7. Program Exclusions. The Parties agree that the following features and offerings shall be excluded:
  - 7.1. Any and all government or educational entities
  - 7.2. Contract warehoused goods
  - 7.3. Ship consolidation services for direct shipments from the manufacturer or other third party suppliers
  - 7.4. Products for export or international shipment
  - 7.5. Any cost override program in which Assignee does not participate
  - 7.6. Purchaser proposal and/or quote generation
  - 7.7. Invoicing of Assignor-provided services (i.e. non-Assignee Products or services)
8. Credit. Assignee shall establish and maintain terms and conditions of credit with Purchaser. Assignor represents that it shall exercise commercially reasonable efforts to inform Assignee of any material changes of which Assignor may become aware in the status, address or creditworthiness of any Purchaser.
9. Fee Invoicing and Payments. Payments owed Assignee by Assignor shall be due within five (5) days from the date of invoice. For each Purchase Order assigned by Assignor, Assignee will pay the applicable Referral Payment, as described in Section 12, to Assignor within fifteen (15) days after Assignee's receipt of payment in full from the Purchaser. Assignor's obligation to pay fees hereunder is absolute and shall not be subject to set-off for any reason.
10. Purchaser Invoicing and Payment. Assignee shall be responsible for invoicing and collecting the payments due from the Purchaser for the Products under an assigned Purchase Order. The invoice shall include Assignee's payment instructions to the Purchaser. Assignee will forward an invoice for the Products ("Invoice") to the Purchaser promptly after shipment. Assignor agrees that it shall not forward any other invoices to the Purchaser for the Products without Assignee's prior written authorization. Assignor further agrees that Assignor shall not advise, direct, or instruct the Purchaser to pay any invoice in any manner contrary to the payment instructions stated on the Invoice.
11. Purchaser Nonpayment and Late Payment.
  - 11.1. Purchaser Nonpayment. In the event the Purchaser does not pay any assigned Purchase Order to Assignee or Purchaser terminates a Purchase Order after Assignee's acceptance of the assignment of the Purchase Order by Assignor, Assignee shall look solely to the Purchaser. Assignor shall have no liability to Assignee or Purchaser related to or arising from Purchaser's nonpayment or termination of the Purchase Order, except as related to late payment as defined in Section 11.2. Assignee shall have sole authority to take all steps necessary to collect, sue for, receive and furnish receipt for such payments and to settle, compromise or discontinue any proceedings pertaining to such payments, the Purchase Order termination, or other claims against or by the Purchaser concerning the assigned Purchase Order.

Notwithstanding anything to the contrary set forth herein, should Purchaser fail to pay Assignee due to errors or actions attributable to Assignor, Assignor agrees to remit payment due to Assignee.

- 11.2. Purchaser Late Payment. In the event Purchaser fails to pay Invoices timely, Assignee shall invoice the Purchaser an interest charge of the lesser of one and one half percent (1 ½ %) per month and the maximum allowed by law against the past due balances at the end of each calendar month up to the point at which Assignee classifies the Purchaser receivable as bad debt. In the event the interest fee invoice is not paid timely by the Purchaser despite commercially reasonable efforts by Assignee to collect such invoices and provided Assignee has provided Assignor with notification of Purchaser's non-payment of the interest fee invoice (i.e. weekly aging reports and the like), Assignor agrees it shall be liable for unpaid interest fee amounts. Assignee may deduct interest fee

amounts from Assignor's Referral Payments, as specified in Section 13, up to the amount due. Should interest fee amounts exceed the Referral Payments due Assignor, Assignor shall be invoiced for the outstanding amounts.

12. Referral Payments

12.1 Purchaser Price: The "Purchaser Price" is the price charged by Assignor to the Purchaser. The Purchaser Price shall be included on each Order assigned by Assignor to Assignee.

Referral Payment: The "Referral Payment" is the amount paid by Assignee to Assignor for each Assigned Order. It is equal to the Purchaser's invoice amount of the Orders assigned to Assignee, minus the following deductions:

- (i) Any taxes
- (ii) Freight and insurance
- (iii) Product Price (i.e. the price at which Assignor would purchase Product from Assignee based on Assignor's prices loaded in Assignee's system at the time of purchase.)
- (iv) Program Fee of two percent (2.0 %) of the Assignor's Product Price
- (v) Processing Fees as applicable (i.e. credit card transactions)
- (vi) Referral Payments previously paid to Assignor where product has been subsequently returned.
- (vii) Any amount necessary to satisfy any other obligations to Assignee

The parties agree that Assignee may invoice Assignor for amounts due Assignee in the event that the Referral Payment calculation creates a negative payment balance.

13. Product Returns Services. Purchaser will submit a request to Assignor to obtain a Return Merchandise Authorization (RMA) for the Purchaser from Assignee prior to any return. Assignor will then submit the request for an RMA to Assignee. RMAs will be issued by Assignee at Assignee's sole discretion. Assignor's Referral Payment for the returned product item(s) under the Purchase Order shall be debited once credit has been issued by Assignee to the Purchaser's account.

When Assignor requests an RMA for the Purchaser, it must provide Assignee with the following information in each request: (i) Purchaser's Account Number with Assignee, (ii) Purchase Order or Contract Number, (iii) Assignee SKU and vendor part number, (iv) Quantity, (v) Reason for RMA request, (vi) Invoice number. The Purchaser must ship Products authorized for return to Assignee's facility.

14. Returns Freight. Inbound freight will in all events be paid by the Purchaser and Purchaser shall bear all risk of loss associated with such return to Assignee's returns facility.

15. Refusals. Refusals are Products that have been shipped to Purchaser from Assignee where Purchaser refuses to accept delivery causing Products to be returned to Assignee by the carrier. Assignee shall reserve the right to charge Assignor fees to cover excessive refusals by Purchaser above and beyond what is considered to be commercially reasonable by Assignee.

16. Taxes. The Assignee will only be responsible for the calculation and remittance of all applicable sales/use taxes to the proper taxing jurisdictions in respect to any of the Products sold to Purchaser by the Assignee. All products sold to the Purchaser will be considered taxable unless a valid resale/exemption certificate is issued to the Assignee by the Purchaser based upon the ship to jurisdiction. The Assignee will not be responsible for any state, local, or income taxes levied against the Assignor.

17. Purchaser's Payment Received by Assignor. Any check, draft, note, cash payment or other money instrument paid by Purchaser for the Products under a Purchase Order assigned to Assignee which is received by Assignor or made to Assignor's favor will be received by Assignor in trust for Assignee and immediately turned over to Assignee to the extent such payment covers any sums due to Assignee.

18. Warranties and Representations

- 18.1 Assignor's Warranties and Representations. Assignor represents and warrants that as of the date of the Assignment: (i) each Purchase Order is represented by Purchaser to be an actual, existing, bona fide offer to purchase Products, (ii) Assignor is solvent, (iii) the Purchase Orders assigned to Assignee are free of all claims and liens, have not and will not be assigned or be sold to any other person, corporation or entity by Assignor, (iv) Assignor's assignment of Purchase Orders hereunder, does not violate any other agreement, including without limitation, any financing agreements or arrangements to which Assignor is a party, (v) Assignor's assignment of Purchase Orders hereunder have been duly approved and Assignor's execution of this Agreement constitutes the valid, legal, binding obligation of Assignor enforceable according to its terms.
- 18.2 Assignee's Warranties and Representations. Assignee warrants and represents to Assignor that: (i) Assignee is solvent, (ii) Assignee has not and will not assign, pledge or hypothecate the assigned Purchase Orders to any other person, corporation, or entity except as mandated by financing and/or leasing requirements; (iii) Assignee's acceptance of any assignment of Purchase Orders hereunder does not violate any other agreement, including without limitation, any financing arrangement to which Assignee is a party, and (iv) Assignee's execution of this Agreement and the acceptance of the assignment of Purchase Orders hereunder constitutes the valid, legal, binding obligation of Assignee enforceable according to its terms.
- 18.3 Warranty Disclaimer. EXCEPT AS OTHERWISE SET FORTH HEREIN, NEITHER PARTY MAKES ANY WARRANTY EXPRESS OR IMPLIED HEREIN, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
19. Confidentiality. The parties acknowledge and agree that each Party will use the same measures it uses for its own information of a similar nature, but not less than reasonable measures, to protect Confidential Information provided to the other party and any Purchase Order from unauthorized use or disclosure and to restrict its use accordingly. Title to or right to possess Confidential Information will remain in the disclosing party. When this Agreement or Purchase Order terminates or expires, the recipient agrees to return or destroy Confidential Information related to the Agreement and the Purchase Order(s), including all copies made, and all writings, descriptions or summaries involving or based on such Confidential Information. Each party agrees to apply these same duties after termination of an applicable Preferred Source Agreement between Assignor and Assignee.
20. Indemnity. Each Party agrees to defend, indemnify and hold harmless the other Party against claims for (i) damage to tangible property of the other party or third parties, and/or (ii) death or bodily injury to persons including, but not limited to, employees or invitees of either party to the extent directly caused by the negligence or willful misconduct of the indemnifying party.
21. Waiver. No delay or omission by either party to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions, or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.
22. Limitation of Liability
- 22.1 Exclusive of sums due and payable hereunder and except to the extent of the gross negligence or willful misconduct, the parties agree that the liability of each to the other arising hereunder, whether in contract tort or otherwise, shall in no event, in the aggregate, exceed One Hundred Thousand Dollars (\$100,000).
- 22.2. ASSIGNOR AND ASSIGNEE AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO THIRD PARTIES FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR DAMAGE, DEATH OR INJURY FOR ANY PRODUCTS USED FOR AVIATION, MEDICAL, LIFESAVING, LIFE SUSTAINING OR NUCLEAR APPLICATIONS.

23. Notice. All notices required hereunder shall be sufficiently given, and effective when sent, if mailed by registered, certified (return receipt requested) or overnight mail, or hand delivered:

(i)	If to Assignor: Assignor  _____  _____	If to Assignee: Ingram Micro, Inc. 1600 East Saint Andrew Place Santa Ana, CA 92705 Attn: Sr. Vice President – Sales Cc: Sr. Vice President – North American Legal
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or to such other address as the parties may specify in writing from time to time.

24. Governing Law. The laws of the State of California shall govern this Agreement without regard to conflict of law principles.

25. Term and Termination

25.1 Term. The Preferred Source Agreement between Assignor and Assignee shall commence on the date of last signature and shall continue thereafter unless terminated as set forth below.

25.2 Termination for Cause. The Preferred Source Agreement may be terminated by a Party upon the material default by the other Party of any term wherein the breaching party fails to cure within thirty (30) days of receipt of written notice thereof.

25.3 Termination for Insolvency or Bankruptcy. Either party may immediately terminate the Preferred Source Agreement and any unfulfilled Purchase Order by giving written notice to the other party in the event of (i) the liquidation or insolvency of the other party, (ii) the appointment of a receiver or similar officer for the other party, (iii) an assignment by the other party for the benefit of all or substantially all of its creditors, (iv) entry by the other party into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, or (v) the filing of a meritorious petition in bankruptcy by or against the other party under any bankruptcy or debtor law for its relief or reorganization.

25.4 Termination for Convenience. Notwithstanding anything to the contrary set forth in the Preferred Source Agreement, either party may terminate the Agreement for convenience upon thirty (30) days prior written notice to the other party. If the Agreement is terminated for convenience, neither Party shall be relieved of any obligation arising out of Purchase Orders accepted by Assignee prior to the effective date of such termination. The parties agree, within thirty (30) days of the effective date of such termination to reconcile and make payment of all undisputed sums due and payable up through the effective date of such termination.

25.5 Termination Obligation. If the Preferred Source Agreement is terminated, Assignor shall not be relieved from any amounts owed arising out of Assignee's advances or commitments made before the effective date of such termination.

26. Counterparts. The Preferred Source Agreement may be executed in counterparts, and each counterpart signed by at least one party shall be deemed an original; and when taken together with the other signed counterpart (whether originally signed or facsimile copies of such signatures) shall constitute but one agreement, which shall be binding upon and effective as to both parties.

27. Section Titles. The section titles used herein and in the Preferred Source Agreement are for convenience only and do not define or limit the contents of any section.

28. Further Assurances. Each Party shall, at its expense do such acts, execute, and deliver such documents a reasonably required to assure and confirm the rights hereby created.

29. Media Releases. Except for any announcement intended solely for internal distribution by either party or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of either party,

all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by either party or its employees or agents relating to the Preferred Source Agreement or its subject matter, or including the name, trade name, trade mark, or symbol of the other party or any affiliate of that party, shall be coordinated with and approved in writing by the other party prior to the release thereof.

30. Assignment. Assignor may not assign the Preferred Source Agreement to its affiliates, subsidiaries, or any successor in interest or the right to monies due from Assignee without the consent of Assignee. Assignee may assign the right to monies due under the Preferred Source Agreement but shall not otherwise assign or transfer its rights and obligations thereunder without the prior written consent of Assignor except as set forth in Section 19.2 (ii) of these terms. Any provisions hereunder which by their nature should survive termination, shall survive termination.
31. Excused Performance. Neither party shall be liable for failure or delay in the performance of any of its obligations hereunder if such delay or failure is caused by circumstances beyond its reasonable control.
32. Independent Contractors. It is agreed that the relationship between Assignor and Assignee is that of independent contractors, and nothing contained hereunder or in the Preferred Source Agreement shall be construed or implied to create the relationship of partners, a joint venture, employment contract, franchise or any relationship other than independent contractors.
33. Standard Terms and Conditions. All Product sales are subject to Assignee's standard terms and conditions of sale that are hereby incorporated by reference and are located Assignee's web site at <http://www.ingrammicro.com>. In the event of a conflict between such terms and conditions and the terms and conditions stated in this Agreement, the terms and conditions hereunder shall control.

## PREFERRED SOURCE PURCHASER AGREEMENT

All Product sales are subject to Ingram Micro, Inc.'s ("Ingram Micro") then current standard terms and conditions of sale which are hereby incorporated by reference and are located at <http://www.ingrammicro.com>. Such terms may be viewed by clicking 'Legal' at the bottom of the screen and then clicking 'Sales Terms and Conditions.' In the event of a conflict between such terms and conditions and the terms and conditions stated herein, the terms and conditions of this Agreement shall control.

Purchaser agrees that products are provided by Ingram Micro solely and exclusively in accordance with the terms in this agreement and they shall supercede any and all terms provided by Purchaser to Ingram Micro, whether in pre-printed format or otherwise.

1. **Order Placement.** Purchaser agrees to place orders ("Orders") with its supplier pursuant to terms in effect between Purchaser and its supplier. An Order is a letter order, purchase order, or an electronic transmission submitted by Purchaser to its supplier and subsequently submitted to Ingram Micro Financial Services "IFSC," otherwise referred to herein as Ingram Micro for acceptance. The Order shall include at a minimum, the following information: (i) Purchaser account number or contract number, (ii) Name of Manufacturer and Product description, (iii) Ingram Micro SKU number, (iv) quantity ordered, (v) price per item and total purchase price, (vi) Purchaser ship to address, (vii) Purchaser billing address, (viii) Purchaser's designation on the face of the Order of the following words: "IFSC FAO ASSIGNOR", and (ix) any other information as required by Ingram Micro. Purchaser shall be responsible to Ingram Micro for any restocking or other charges associated with an incorrect shipment to the extent caused by Purchaser's failure to accurately provide the above required order information. Changes or cancellations by Purchaser to Orders will be accepted up to the point the Order prints in Ingram Micro's distribution network for picking. Change or cancellation of Orders by Purchaser may be subject to additional fees.

Purchaser acknowledges and agrees that its supplier may assign any Order(s) and all of its rights and obligations under any Order(s) to Ingram Micro without notice. Ingram Micro shall accept or reject Orders as otherwise set forth herein.

Neither Purchaser nor Ingram Micro will have the power to bind the other to any obligation or responsibility except as specifically set forth herein and their relationship shall remain solely and exclusively that of seller, in the case of Ingram, and buyer, as in the case of Purchaser, of Products.

Product allocation to Orders shall be conducted per Ingram Micro's standard fulfillment policies including but not limited to policies associated with manufacturer-constrained product.

2. **Credit Card Purchases.** Purchaser may utilize any credit card currently accepted by Ingram Micro for the purchase of Product, subject to the approval of each transaction by associated credit card issuer and subject to the supplier's participation in and agreement with Ingram Micro's "Credit Card Related Terms and Conditions" Addendum to the Preferred Source Agreement. Credit cards will only be accepted at time of purchase. Purchaser accepts that "IFSC Fulfillment" will be referred to as the merchant on documents provided by the credit card issuer for purchases made pursuant to these terms.

Purchaser agrees that its election to use a credit card for its Product purchase(s) generated hereunder shall constitute its authorization to Ingram Micro to use such credit card information to consummate such sale. Product(s) sold and purchased are understood to be those that are set forth in the Order(s) assigned to Ingram Micro by Purchaser's supplier under the terms set forth herein.

3. **Invoicing and Payment.** Responsibility for invoicing and collection of payments shall rest solely with Ingram Micro. Purchaser agrees to be invoiced following shipment and to pay Ingram Micro at the location and time set forth on the invoice.
4. **Shipment and Delivery.** All Products will be shipped on an "as available" basis.

Purchaser shall bear all costs associated with the shipment of Products. Unless otherwise stated at the time of order, products shall be shipped via standard ground freight, Ingram Micro's carrier of choice. Should Purchaser require

expedited freight, such information must be noted at the time of order and are subject to available offerings at the time of request. All shipments will be made FOB Origin.

5. Export. Purchaser agrees that it does not intend to ship, deliver or otherwise export any products purchased from Ingram Micro outside the United States. In the event it does so it agrees to fully comply with all U.S. governmental regulations and agrees to indemnify and hold harmless Ingram Micro, its officers, directors, shareholders and employees from any and all claims of any nature (including reasonable attorneys' fees) arising as a result of such export action.
6. Product Returns. Returns must be coordinated through Purchaser's supplier. Purchaser shall contact its supplier for any returns-related issues. Returns will only be permitted in the case of damaged or defective Product.

AGREED AND ACCEPTED:

\_\_\_\_\_ ("Purchaser")

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Name of Purchaser's Supplier (Reseller)