

## STANDARD TERMS AND CONDITIONS OF SALE

1. **SCOPE.** The terms and conditions of sale set forth herein apply to all contracts of sale or license of *Lexington Technology* goods or services ("Products"), including proprietary information, entered into by *Lexington Technology*. All quotations, proposals, bids, or similar communications from *Lexington Technology* shall be considered solicitations of offers. All orders placed by *Buyer* shall be considered offers, which shall be deemed accepted upon written notice thereof from *Lexington Technology*. Notwithstanding terms and conditions that may be included on *Buyer's* purchase order form or otherwise, *Lexington Technology's* acceptance is conditional upon *Buyer's* assent to the terms and conditions set forth herein. Any term or condition in *Buyer's* purchase order or acceptance in addition to or not identical with any of these terms and conditions shall not become part of the contract unless such term or condition is stated in writing and approved and signed by an officer of *Lexington Technology*. *Lexington Technology's* failure to object to any term or condition contained in any communication from *Buyer* shall not be deemed assent to such term or condition or a waiver of these terms and conditions.
  
2. **PRICING TERMS.** For all proposals supplied by *Lexington Technology*, *Lexington Technology* will furnish to *Buyer*, in addition to the total price, an itemized breakdown showing individual pricing. Verbal quotations expire the day they are made.
  - 2.1 *Lexington Technology* may make any changes to the List Prices at any time for all Products and services included in the List Prices.
  
  - 2.2 List prices will remain firm through delivery to *Buyer* unless *Buyer* requires shipment of Hardware or Software beyond a six (6) month period from order receipt by *Lexington Technology*. Prices for new Hardware or Software items, not defined in the original (Order) bill of material, that are added by Change Order, shall be priced based upon the then current List Price.
  
  - 2.3 Discounting from List Price may not apply to Training or Services. *Lexington Technology* reserves the right to modify the discounting on any item included in the Price List. *Lexington Technology* shall inform *Buyer* of such changes with no less than ninety (90) days' prior written notice.
  
  - 2.4 One set of system documentation will be included by *Lexington Technology* with the purchase of each *System*. Additional documentation requested by *Buyer* shall be at the applicable rates for the documentation requested.
  
  - 2.5 All prices are FOB, Shipping Point. All quoted prices are subject to additions which may be necessary to cover any duty, tax, or charge, now existing or hereafter imposed by Government authorities upon equipment or services quoted by *Lexington Technology*, or upon the production, sale, distribution, delivery, import, or export thereof, or upon other features related thereto. Orders placed directly with *Lexington Technology* will be quoted, invoiced, and paid in U.S. dollars.
  
3. **BILLING**

3.1 **Minimum Purchase**

- 3.1.1 *Lexington Technology* has a \$100 minimum order plus handling charges and shipping. The full value of the shipment, as well as handling services, will be paid for prior to time of shipment for first-time *Buyers*.
- 3.1.2 Minimum orders will not be subject to *Lexington Technology* Standard Discount Rates.
- 3.1.3 The *Lexington Technology* standard Return Material Authorization (RMA) program is not applicable for minimum orders.

3.2 **Software Development**

The man-hours for engineering services (Software development or modification) are on a Time and Material order and will be billed at published rates. In addition to these man-hour billings, any associated travel, living, and other expenses incurred will be billed at actual costs.

4. **PAYMENT.** Unless otherwise specified, *Buyer's* payment is due within thirty (30) days from the date of each invoice, subject to credit approval by *Lexington Technology*. *Buyer* agrees to pay *Lexington Technology* in U.S. dollars in the United States of America by electronic funds transfer, check, auto-check, bank draft, credit card, or any other form of payment specified by *Lexington Technology* in its acknowledgment of *Buyer's* order, including an irrevocable, confirmed letter of credit from a U.S. bank, payable at sight. *Lexington Technology* reserves the right to establish and/or change the credit and payment terms, when, in the sole opinion of *Lexington Technology*, *Buyer's* financial condition or previous payment record warrants such action. *Buyer* agrees to pay *Lexington Technology* an interest rate of 2% over prime for any invoices over thirty-five (35) days old, unless previous arrangements have been made.

5. **LIABILITY AND INDEMNIFICATION**

- 5.1 **Lexington Technology Indemnification.** *Lexington Technology* shall defend, indemnify, and hold harmless *Buyer* from and against any and all claims, losses, expenses, or damages, including attorney's fees arising from or related to the injury to or death of any person including any employee of *Lexington Technology*, and the damage to or loss of any property to the extent resulting from any negligent acts or omissions of *Lexington Technology*.
- 5.2 **Buyer Indemnification.** *Buyer* shall defend, indemnify, and hold harmless *Lexington Technology* from and against any and all claims, losses, expenses, or damages, including attorney's fees arising from or related to the injury to or death of any person including any employee of *Buyer*, and the damage to or loss of any property to the extent resulting from any negligent acts or omissions of *Buyer*. In no event, regardless of cause, shall *Lexington Technology* be liable for incidental or consequential damages either real or alleged.

6. **ACCEPTANCE OF PRODUCTS.** The successful completion of *Lexington Technology* inspection, test procedures, and diagnostic test programs performed at *Lexington Technology's* plant on the Products shall constitute *Buyer's* acceptance of the Products.
7. **MINIMUM LEAD TIME.** Depending on such factors as quantity, material viability, configuration, and content, orders are typically shippable upon a one-day lead time after receipt of order. Any made-to-order systems accepted by *Lexington Technology* with delivery requirements less than ten (10) working days may be subject to an expedite fee as indicated.

Shipment Date	Expedite Charge
Between 7 and 9 days from receipt of order by <i>Lexington Technology</i>	5% of net invoice price
Between 3 and 6 days from receipt of order by <i>Lexington Technology</i>	10% of net invoice price
Under 2 days from receipt of order by <i>Lexington Technology</i>	15% of net invoice price

8. **CHANGES**

- 8.1 Changes to an accepted made-to-order system for quantity, components, or configuration will be subject to the following:

Made-to-Order Systems	
Date Notice Received	Fees for Changes
Between 7 and 10 days before scheduled shipment date	<ul style="list-style-type: none"> <li>Changes to delete items will incur a restocking fee of 5% of the amount deleted.</li> <li>Changes to add items will incur an expedite fee of 5% of the net amount added.</li> </ul>
Less than 5 days before scheduled shipment date	<ul style="list-style-type: none"> <li>Changes to delete items will incur a restocking fee of 10% of the amount deleted.</li> <li>Changes to add items will incur an expedite fee of 10% of the net amount added.</li> </ul>

- 8.1.1 **Systems Integration Content.** The charges that are outlined in 8.1 above do not apply to changes, additions, or deletions on orders with engineering services (Software development or modification) content. In the event that *Buyer* requests changes, additions, or deletions to any portion of the order, and *Lexington Technology* accepts such alterations, *Lexington Technology* will charge the *Buyer* for additional costs incurred, including engineering, documentation, programming, labor, and materials plus overhead and profit markups based upon *Lexington Technology's* then prevailing rates. *Lexington Technology* will make a reasonable effort to effect such changes and meet the original delivery date. However,

*Lexington Technology* reserves the right to delay delivery based upon the additional time required to perform the changes requested by *Buyer*.

- 8.2 Changes to quantity or components for standard product order will be 5% of the component to be restocked.
- 8.3 If (a) *Buyer* requests deferral of shipment or (b) *Buyer* fails to provide information, material, documentation, or timely approvals as required or (c) *Buyer*, or its agents, by its acts, omissions, orders, instructions or directives, delays, changes, alters, suspends, or accelerates the manner, method, or sequence of *Lexington Technology's* work, and any such action causes *Lexington Technology* to incur additional costs or expenses of any kind, then *Lexington Technology* shall charge *Buyer* for all actual direct or indirect costs plus overhead and profit markups based upon *Lexington Technology's* then prevailing rates. If an extension of delivery is required beyond the original schedule due to any of the foregoing events, all extra freight, shipment, storage, and handling costs due to such delay shall be for *Buyer's* account.
9. **CANCELLATION.** Cancellation of an accepted order less than one (1) day before the scheduled delivery date is not allowed. Cancellation of an accepted order more than three (3) days before the scheduled delivery date will be subject to charges for the burdened costs expended plus profit markups by *Lexington Technology* prior to cancellation, including but not limited to Hardware purchases, systems design, planning, drawings, program translation, and documentation. Cancellation charges for custom assemblies, subassemblies, or Software will incur a 100% cancellation fee after such item is manufactured or produced, or on a percentage-of-completion basis, as applicable. The minimum cancellation fee will be 20% of the net order value.
10. **DELIVERY, TITLE, AND RISK OF LOSS OR DAMAGE.** *Lexington Technology* will use its best efforts to deliver Products in accordance with mutually agreed-upon delivery dates. *Lexington Technology* shall have the right to make partial shipments for any order placed by *Buyer*, and *Buyer* shall be required to pay for such partial shipments. The FOB point shall be the *Lexington Technology* shipping point. Products held or stored for *Buyer* by *Lexington Technology* shall be at the risk and expense of *Buyer*. In the absence of specific written instructions, *Lexington Technology* shall select the carrier and obtain insurance for the full value of the shipment and bill the *Buyer* for the full cost of such shipping and insurance, but such carrier or insurer shall not be deemed to be the agent of *Lexington Technology*, and in no event shall *Lexington Technology* be liable for any delay in delivery or assume any liability regarding shipment, including the risk of loss or damage. Title and all risk of loss or damage shall pass to *Buyer* upon delivery of the Products to the carrier at *Lexington Technology's* designated shipping point.
11. **WARRANTY**
- 11.1 *Lexington Technology* warrants that the articles delivered hereunder shall be FREE from defects in material, workmanship, and fabrication. LEXINGTON TECHNOLOGY MAKES NO WARRANTY, EXPRESS OR IMPLIED (INCLUDING,

BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR INTENDED PURPOSE) OR STATUTORY, OTHER THAN THE FOREGOING EXPRESS WARRANTY. Failure of *Buyer* to submit any claim hereunder within thirty (30) days after receipt of such articles shall be an admission by the *Buyer* and conclusive proof that such articles are in every respect as warranted and shall release the Company from any and all claims for damage or loss sustained by *Buyer*. In the event *Buyer* timely submits a claim for breach of warranty, the parties agree that *Buyer's* sole and exclusive remedy shall be the repair or replacement of such defective articles. In no event shall *Lexington Technology* be liable for incidental or consequential damages.

- 11.2 *Lexington Technology* warrants the Hardware Products against defects in materials and workmanship under normal use and service for twelve (12) months from the date of shipment from *Lexington Technology's* facility. *Lexington Technology* warrants the Software Products (including Software Keys) against defects in materials and workmanship under normal use and service for thirty (30) days from the date of shipment from *Lexington Technology's* facility. In case of failure, *Lexington Technology's* liability shall be limited to furnishing, but not installing, necessary repair parts or, at the option of *Lexington Technology*, to repairing the defective Product at its plant, providing the equipment is returned at *Buyer's* expense. *Lexington Technology* will pay the freight costs associated with returning the Products to the *Buyer*. The warranty period for a repaired or replacement Product is ninety (90) days or the balance of the term of the original warranty period, whichever is longer. *Lexington Technology* makes no other warranties, express or implied, with respect to its Products and further disclaims any other such warranties, including any warranty of merchantability or fitness for a particular purpose. In no event shall *Lexington Technology* be liable for incidental or consequential damages or for the loss of profit, revenue, or data even if it has been advised of the possibility of such damages. The sole obligation and liability of *Lexington Technology* shall be to repair and/or replace, at the discretion of *Lexington Technology*, defective Products or parts thereof returned to the service facility of *Lexington Technology* following written notice of the defect given by *Buyer* during the warranty period and within ten (10) days of discovery thereof.
- 11.3 If *Lexington Technology* provides third-party products, *Lexington Technology's* warranty on such third-party products shall be limited to the "pass through" of the manufacturer's warranty. In addition, the workmanship performed by *Lexington Technology* to connect such third-party devices to Products or Systems shall be subject to the warranty period stated within this Section 11.
- 11.4 Terminations or communication cables not supplied by *Lexington Technology* are not warranted, and use of such cables may void the standard Product warranty. In addition, *Buyer* accepts full responsibility for the manufacture and installation of any such cables, and *Buyer* is solely liable for their proper operation.
- 11.5 The warranty contained in this Section 11 shall be void and of no effect or validity unless *Buyer* has complied with the following conditions:

11.5.1 *Buyer* has installed the Products in accordance with *Lexington Technology's* installation specifications, has used the Products in accordance with *Lexington Technology's* technical documentation, and has performed inspections as prescribed in *Lexington Technology's* service manual, including prompt replacement or repair of defective parts.

11.5.2 The Products, or parts thereof, have not been subjected to any misuse, alteration, neglect, or accident and have not been repaired by any person other than by an employee or an authorized representative of *Lexington Technology*.

11.6 All services provided by *Lexington Technology*, including repairs and installations, are warranted to be free of defects in workmanship for a period of ninety (90) days from the date of service. In case of failure, *Lexington Technology's* liability shall be limited to furnishing the necessary materials and labor to replace or repair only those parts supplied by *Lexington Technology*.

11.7 During the warranty period, *Lexington Technology* shall pay all labor costs of repairing or replacing any defective or noncomplying Product, provided, however, that *Buyer* shall pay *Lexington Technology* for all actual labor costs incurred, including travel and living expenses, if any, should *Lexington Technology* determine that a Product which *Lexington Technology* has been requested to repair or replace under the warranties herein has failed to operate as warranted due solely to *Buyer's* actions or due to *Buyer's* failure to properly operate the Product.

11.8 *The optional Lexington Technology Extended Warranty provides the same coverage as the Lexington Technology Standard Warranty but extends the warranty for a specific period of time.*

11.9 The Standard and Extended Warranty periods noted above only cover those items that are listed on the *Lexington Technology Price List*. *Lexington Technology* will also offer to quote extended warranties, if available, for Third-Party Manufacturer-supplied subsystems for a period concurrent with the third-party Standard and Extended Warranty periods.

## 12. **RETURNED EQUIPMENT**

### 12.1 **Returns For Repair**

12.1.1 Any Product to be returned to *Lexington Technology* for repair, upgrade, or exchange must have a Return Material Authorization (RMA) number assigned before shipment to *Lexington Technology*. The RMA number must be referenced on all documents accompanying the returned Product, as well as any subsequent associated documentation, and prominently displayed on the outside of the shipping container.

12.1.2 Products that are no longer in warranty due to expiration of the warranty period or due to misapplication or misuse will be repaired or replaced at

the option of *Lexington Technology*. All costs associated with the shipment of out-of-warranty Products to *Lexington Technology* and the reshipment of repaired or replacement Products to *Buyer* shall be borne by *Buyer*. The cost of repair or replacement of out-of-warranty Products shall not exceed 50% of *Lexington Technology's* then current list price for those Products. It is *Lexington Technology's* policy to ship repaired or replacement Products within ten (10) working days of receipt of the out-of-warranty Products at *Lexington Technology's* factory.

- (a) In emergency situations, *Buyer* may request that a replacement Product be shipped to *Buyer* before return of a defective Product to *Lexington Technology* (a "Ship Ahead"). *Lexington Technology* will make every reasonable effort to comply with such Ship Ahead requests. In the event *Lexington Technology* ships the replacement Product before receipt of the defective Product, in addition to the standard repair charge noted in Section 12.1.2 above, an expedite fee of \$150 will be charged, which will include the cost of overnight shipment to *Buyer*.
- (b) It is *Buyer's* obligation to ship the defective Product to *Lexington Technology* immediately upon receipt of the Ship Ahead Product. If *Buyer* does not ship the defective Product to *Lexington Technology* within fifteen (15) days of receipt of the Ship Ahead Product, *Buyer* agrees to pay full list price for the Ship Ahead Product and will be invoiced as such by *Lexington Technology*.
- (c) Upon receipt of the defective Product, *Lexington Technology* may elect to consider the Ship Ahead Product as a replacement for the defective Product.

## 12.2 **Returns For Credit**

- 12.2.1 Any Product to be returned to *Lexington Technology* for credit must have a Return Material Authorization (RMA) number assigned before shipment to *Lexington Technology*. The RMA number must be referenced on all documents accompanying the returned Product, as well as any subsequent associated documentation, and prominently displayed on the outside of the shipping container.
- 12.2.2 A Product may only be returned for credit under the following conditions:
  - (a) The equipment is unused and is in the original shipping container.
  - (b) The return occurs less than thirty (30) days from original date of shipment by *Lexington Technology*.
- 12.2.3 The restocking charge for all returns is a nondiscountable 15% of the current list price of the equipment returned.

13. **UNAUTHORIZED MODIFICATION OF PRODUCTS.** In the event *Buyer* or any of its employees, agents, or independent contractors makes or causes any modification or enhancement to any Product that is not approved by *Lexington Technology*, *Buyer* agrees to protect, defend, indemnify, and hold harmless *Lexington Technology* from all sums, costs, expenses, and attorney's fees that *Lexington Technology* may incur as a result of any liability caused by such modification or enhancement.
14. **ASSIGNMENT.** Neither party shall assign, pledge, or in any way transfer its rights or duties related to any order or agreement entered into hereunder, either in whole or in part, without the prior written consent of the other party, which will not be unreasonably withheld.
15. **PATENTS.** *Lexington Technology* warrants that the Products provided by *Lexington Technology* do not infringe any patent rights, copyrights, trademarks, or trade secrets owned or controlled by any third party. *Lexington Technology* agrees to defend, indemnify, and hold harmless *Buyer* from and against any and all damages and expenses out of or incurred by reason of any actual or alleged claim of infringement or misappropriation of any patent, trademark, or trade secret resting in the Products. *Lexington Technology* shall assume full direction and control of the defense of any suit or claim brought thereon, provided that (a) *Buyer* notifies *Lexington Technology* promptly in writing of any such actual or alleged claim or suit arising therefrom and (b) *Buyer* provides information and reasonable assistance for such defense to *Lexington Technology* at *Lexington Technology's* expense. If *Buyer's* use of the Product(s) is enjoined, *Lexington Technology* shall, at no cost to *Buyer*, make immediate arrangements to:
- 15.1 Obtain the right to use for *Buyer*;
- 15.2 Replace with a suitable noninfringing Product or Products which shall be subject to the warranties in Section 11 of these Standard Terms and Conditions of Sale.
- 15.3 Remove the infringing Product(s) and pay all necessary costs incurred by *Buyer* to obtain, install, and test a new noninfringing satisfactory component or part.
16. **AVAILABILITY OF PRODUCTS AND SUPPORT SERVICES.** *Lexington Technology* shall maintain availability of the Products and related support services for a period of twelve (12) months after *Lexington Technology* has discontinued inclusion of such Products on its standard Price List. *Lexington Technology* shall not be required to provide the Products if one or more of the components of such Products becomes unavailable and, after *Lexington Technology* has made a diligent search for a replacement, no replacement is available at a reasonable price.
17. **EXPORTS.** In the event that *Buyer* intends to export or deliver all or any portion of the Products outside the United States to a country in which an export license would be required, *Buyer* agrees to notify *Lexington Technology* of its intent to do so and agrees to obtain all necessary export licenses and clearances with respect to such delivery. *Buyer* agrees to indemnify *Lexington Technology* for all costs, damages, and expenses due to the failure to comply with this Section 17. *Buyer* also agrees to comply with the United States export regulations.

18. **SOFTWARE LICENSE.** All *Lexington Technology*-owned and -licensed Software Products are furnished to *Buyer* under license for use, subject to the terms and conditions of a License Agreement, incorporated herein by reference, and may be used, assigned, or transferred only in accordance with such license terms and conditions. Ownership of and title to the Software shall at all times remain with *Lexington Technology*.
- 18.1 **License Grant.** All Software programs which are embodied in human-readable source form or machine-readable object form and which include, but are not limited to, programs having a series of instructions, statements and data, and related materials provided by *Lexington Technology* are the property of *Lexington Technology* and/or others and are subject to the terms set forth in this license, in which *Buyer* is provided solely with a personal and nonexclusive license to use such programs solely for their internal business purposes in the country in which the Software was furnished and for execution on the system for which it was provided.
- 18.2 **Copyright and Title.** No title to the intellectual property in the Software programs or material is transferred to *Buyer* under this license. All Software and its copyrights are owned by *Lexington Technology* and/or its suppliers. The Software is protected by United States copyright laws and international treaty provisions. Therefore, *Buyer* must treat the Software like any other copyrighted material (e.g., book or musical recording). *Buyer* must reproduce and include the copyright notice on any backup copy. The written materials and firmware may not be copied.
- 18.3 **Restricted Use.** *Buyer* shall not export or reexport the programs or material without the appropriate United States and foreign government licenses. *Buyer* agrees not to reverse engineer, decompile, or disassemble the Software. *Buyer* may not rent or lease the Software to any third parties but may transfer the Software and written materials on a permanent basis provided no copies are retained and the recipient agrees to the terms of this Software license. Storage media which *Buyer* received from *Lexington Technology* may contain certain Software for which *Lexington Technology* has not accepted an order from *Buyer* for a Software License. If *Buyer* desires to license this Software, *Buyer* must obtain the appropriate Software License from *Lexington Technology*.
19. **CONFIDENTIAL INFORMATION.** *Lexington Technology* and *Buyer* will maintain in confidence and not disclose, reproduce, or copy materials, documentation, or specifications that are provided to either party and marked as “confidential” or “proprietary” or with some other similar designation. Subject to any existing agreement between *Lexington Technology* and *Buyer*, proprietary or confidential information obtained upon either party’s visit to the other’s plant or otherwise obtained from the other party shall be retained as confidential and not disclosed to any third party without the written consent of the other party. *Lexington Technology* retains all rights in any invention, improvement, discovery, or patent it conceives relating to any or all of the Products.

20. **DATA RIGHTS.** No rights to any intellectual property residing in the Products or any data ("Product Data") furnished with the Products are granted hereunder. *Buyer* shall have no right to copy or reproduce in whole or part any Product Data without the prior written consent of *Lexington Technology*.
21. **FORCE MAJEURE.** *Lexington Technology* shall not be liable for delay in delivery or performance, or for nondelivery or nonperformance or failure to manufacture, in whole or in part, caused by the occurrence of any contingency beyond the control of *Lexington Technology* or its suppliers, including, without limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or agency or subdivision thereof, judicial action, labor dispute, fire, accident, explosion, epidemic, quarantine, restriction, storm, flood, earthquake or other act of God, shortage of labor, fuel, raw materials, components, services, facilities, vehicles or machinery, delays of suppliers, or technical failure, against which *Lexington Technology* has exercised ordinary care. If any such contingency occurs, *Lexington Technology* may allocate production and deliveries among *Lexington Technology's* customers, and the date of delivery or performance shall be extended for a period of time equal to the time loss caused by such contingency.
22. **ARBITRATION.** Should a matter arise which cannot be settled by the parties to their mutual satisfaction, then and only then should this matter be subject to resolution under arbitration. The parties agree that any such arbitration shall be conducted in the county of Orange, state of California.
23. **APPLICABLE LAW.** This agreement is made and shall be governed by, construed, and enforced in accordance with the laws of the state California.