

TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.

1. **GENERAL.** Berlinger USA LLC ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any form issued by Buyer shall not operate to vary any of the terms and conditions set forth herein unless expressly agreed to by Seller in writing. If Buyer objects to any term or condition set forth herein, the objection must be in writing and received by Seller at the address stated on the opposite side of this document prior to the Seller's delivery of any of the Products. Seller's failure to object to terms contained in any communication from Buyer will not be a waiver of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.
2. **PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions, which are not part of Seller's original price quotation.
3. **TAXES AND OTHER CHARGES.** Prices for the Products are exclusive of all excise, sales, use, transfer and other taxes and duties imposed by any federal, state, municipal, or other government authority with respect to the sale, purchase, manufacture, delivery, storage, processing, use, consumption, or transportation of any Products covered hereby, all of which taxes must be paid by Buyer.
4. **TERMS OF PAYMENT.** Seller may invoice Buyer on shipment for the price and all other charges payable by Buyer with respect to such shipment. All payments shall be made by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If the Products are delivered in installments, Buyer will pay for each installment in accordance with the payment terms specified above. Delays in delivery shall not extend terms of payment. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and two percent (2.0%) per month, or, if lower, the highest rate permitted by law, together with all costs and expenses (including without limitation reasonable attorney's fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.
5. **DELIVERY: CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's facility in Marietta, Ohio or Ganterschwil, Switzerland. Unless otherwise mutually agreed to by the parties, Seller will select the carrier for shipment of the Products, but in no event will Seller be deemed to assume any liability in connection with such shipment nor will the carrier be deemed to be the agent of Seller. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. The Products will be insured in transit at the expense of the Buyer. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of any such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be cancelled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefore. Credit will not be allowed for Products returned without the prior consent of Seller.
6. **TITLE AND RISK OF LOSS.** Subject to the provisions of Section 7 below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Product shall at all times remain with Seller or the licensor(s) thereof, as the case may be. Any claims for damage to, or loss or misdelivery of, the Products will be filed directly with the carrier by Buyer.
7. **SECURITY INTEREST.** Seller reserves and Buyer grants to Seller a security interest in all Products sold and all proceeds thereof to secure the full payment and performance by Buyer of its obligations and liabilities to Seller. Buyer acknowledges and agrees that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may request in order to evidence or perfect such security interest.
8. **INDEMNIFICATION.**
 - 8.1 **By Seller.** If notified promptly in writing of any action (and all prior related claims) brought against Buyer based on a claim that a Product infringes any valid Swiss or international patent, copyright or trade secret, Seller shall defend such action at Seller's expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Seller shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Buyer shall cooperate fully with Seller in the defense, settlement, or compromise of any such action. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or (iv) modification of the Product by anyone other than Seller without Seller's prior written approval. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE PATENTS, COPYRIGHTS, TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES.
 - 8.2 **By Buyer.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.
9. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER UNDER SECTION 8.1 ABOVE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE THEREFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGES OR (b) IS NEGLIGENT.
10. **MISCELLANEOUS.** Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any attempted delegation or assignment shall be void. The rights and obligations of the prices hereunder shall be governed by and construed as a sealed instrument in accordance with the laws of the State of Ohio. In the event that any one or more provisions contained herein (other than the provision obligating Buyer to pay Seller for the Products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The remedies contained herein are cumulative and in addition to any other remedies at law or in equity. Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer.