



**Diakont Advanced Technologies
Terms and Conditions of Sale – Rev. A**

These Terms and Conditions of Sale (“Agreement”) apply to all outstanding and future purchase orders (“Purchase Orders”) issued to Diakont Advanced Technologies, Inc. (“Seller”), from customers, integrators, or resellers (collectively “Customers”) for any product or service (“Product”).

- 1.) Scope of Agreement. These Terms and Conditions of Sale apply to the sale or issuance of Product provided by the Seller to the Buyer. Each sale of Product and the acceptance of any Purchase Order submitted by a Buyer is expressly made conditional on Buyer's assent to these Terms and Conditions of Sale, and Seller agrees to furnish the Product only upon the terms and conditions of this Agreement. Any additional, different, or conflicting terms and conditions set forth in any documents issued by a Buyer at any time, including without limitation any Purchase Orders and any specifications are hereby objected to by Seller, shall be wholly inapplicable to any sale of Product and shall not be binding in any way on Seller. No waiver or amendment to the terms and conditions of this Agreement shall be binding on Seller unless made in writing expressly stating that it is such a waiver or amendment, and signed by Seller.
- 2.) Payment Terms. Seller may, but is not obligated to, sell Product to a Buyer on credit. In the event that Buyer sells Products on credit, then payment in full shall be due and payable thirty (30) days from the date of invoice. In the event Buyer fails to pay Seller the invoiced amount due within thirty (30) days of the date of invoice, Buyer shall pay Seller interest on such delinquent payment at one and one-half percent (1.5%) per month, compounded monthly, or the highest rate permitted by law. Buyer shall pay all collection expenses, including but not limited to attorney fees, incurred by Seller in the collection of amounts owed by Buyer.
- 3.) Delivery and Acceptance. If within forty eight (48) hours of delivery Buyer has not provided Seller an itemized written notice of an objection to the condition of the Product, Buyer shall be deemed to have accepted the Product as satisfactory in all respects.
- 4.) Warranty. Seller warrants to the Buyer that it will repair or replace Product that is defective in material or workmanship, under normal use and service, for a period of twelve (12) months following shipping. Seller's obligation under this warranty is limited to the repair or replacement, at Seller's option, of the applicable components. This limited warranty shall only apply to defects that are reported to Seller within the applicable warranty period and which, upon examination by Seller, prove to be defective.
- 5.) No Damages for Delay. Although Seller will attempt to meet shipment and delivery schedules, Seller will not be liable to Buyer for any damages resulting from late shipment or delivery, including but not limited to direct, indirect, economic, incidental, or consequential damages, including without limitation lost profits or income, loss of use, downtime, cover, and employee or independent contractor wages, payments, and benefits.

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- 6.) Ownership and Transportation. All sales shall be with Ex Works delivery terms, and all transportation expenses shall be paid by Buyer. Buyer shall be responsible for making all in-transit damage claims to the shipper or carrier. The risk of loss, theft, destruction, or damage to the Product shall pass to Buyer at Seller's facility, prior to loading for carriage.
- 7.) Limitation of Liability. Seller's liability for any claim of any kind, including negligence and breach of warranty, for any loss or damage resulting from, arising out of, or relating to the manufacture, sale, delivery, resale, repair, or use of the Product shall in no case exceed the purchase price for the Product which give rise to the claim.
- 8.) Force Majeure. Seller shall not be liable for any actions or failure to act due to causes beyond its reasonable control, or due to acts of God, acts of Buyer, acts of civil or military authority, priorities, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, delays in transportation, car shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials, or processing facilities.
- 9.) Waiver. No waiver of any provision of these Terms and Conditions (nor any right or default hereunder) shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any such waiver shall be effective only for the instance given, and shall not operate as a waiver with respect to any other rights or obligations under this Agreement or applicable law in connection with any other instances or circumstances.
- 10.) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA.
- 11.) Assignment. Neither these Terms and Conditions, nor any Purchase Order, nor any interest under either of them may be assigned or delegated by Seller without the prior written consent of Buyer.
- 12.) Taxes. The purchase price does not include sales, use, excise, or similar taxes. Consequently, in addition to the purchase price for Product, the amount of any present or future sales, use, excise, or other tax applicable to the sale or use of the Products sold hereunder shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities. Buyer shall indemnify, defend, and hold Seller harmless from all such taxes.
- 13.) Termination, Reduction in Quantity, Rescheduling Delivery. In the event Buyer desires to terminate any part or all of its Purchase Order, reduce the quantity of the Product ordered, or reschedule the delivery, fair compensation shall be made to Seller which shall take into account, among other things, expenses incurred and commitments already made by Seller, reasonable costs and expenses incurred by Seller in making settlement hereunder, the increased costs incurred by Seller by reason of a revision in the delivery schedule, and in the case of termination or reduction in the quantity of Buyer's Purchase Order, the profit reasonably anticipated by Seller.

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- 14.) Return Policy. Prior authorization must be obtained from Seller for the return of any Product, which authorization Seller may withhold at its discretion. If a return is authorized, transportation charges must be prepaid by Buyer. Items returned for credit are subject to a charge of 25% or more to cover inspection, reconditioning, restocking, and repackaging. Returned goods must be received undamaged. Risk of loss with respect to returned goods shall remain with Buyer until receipt by Seller. Custom or non-standard goods will generally not be authorized for return.
- 15.) Remedies. In the event of Buyer's default under these Terms and Conditions of Sale or in the performance of any Purchase Order, Seller shall have available all rights and remedies at law or in equity. Buyer agrees to pay Seller all costs and expenses, including attorney fees, incurred by Seller in exercising any of its rights and remedies. No failure on the part of Seller to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof. No waiver by Seller of any default shall constitute a waiver by Seller of any additional or subsequent default.
- 16.) Entire Agreement. All agreements and understandings of any character heretofore made between Seller and Buyer are embodied herein, and no changes shall be made hereto unless the same shall be in writing and duly signed by an authorized representative of both Seller. No terms or provisions contained in any Purchase Order submitted by Seller shall apply.
- 17.) Severability. In the event any provision of these Terms and Conditions of Sale is held or determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.
- 18.) Compliance with Laws. Each party shall perform its obligations hereunder in compliance with all applicable laws, regulations, and other legal requirements, including US Export Control regulations.
- 19.) Arbitration. Seller may, at its discretion, settle any claim or controversy arising out of or relating to any Purchase Order, or the breach of non-performance of any provision hereof, by arbitration in accordance with the Arbitration Rules of the American Arbitration Association in effect at the time such claim or controversy arises. Seller and Buyer agree that any arbitration shall be administered and conducted in San Diego, CA, USA.
- 20.) Language. The parties have expressly required that these Terms and Conditions and the applicable Purchase Order(s) be prepared in the English language.

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