

BORDER STATES INDUSTRIES, INC.
TERMS AND CONDITIONS OF SALE

1. EFFECT OF TERMS AND CONDITIONS

These Terms and Conditions of Sale ("Terms") govern any and all sales by Border States Industries, Inc., and its related entities ("Border States" or "Seller"), of goods and/or services to its customers ("Customer") (each a "Party" and, collectively, "Parties"), including, without limitation, sales of hardware, firmware, and software products, training, programming, maintenance, engineering, parts, and other services (the "Products"). Customer's (i) order or statement of intent to purchase Products from Border States, or (ii) any direction by Customer to proceed with procurement or shipment of Products, or (iii) any payment by Customer for Products, (iv) Customer's placement of an order on Border States' ecommerce website, or (v) Border States' rendering any of the services ordered shall constitute Customer's specific and express agreement to these Terms. By agreeing to these Terms, Customer also agrees to be bound and abide by our Privacy Policy, found [here](#), incorporated herein by reference. By accessing our website, www.borderstates.com, Customer agrees to abide by Border States' Website Terms of Use, found at <https://www.borderstates.com/termsAndConditions>. Under no circumstances will Border States agree to or be bound by any provisions, conditions, or agreements that are inconsistent with, contrary to, additional to, in lieu of, or that modify in any manner, these Terms, unless an authorized Officer of Border States agrees to such provisions, conditions, or agreements in writing. No terms and/or conditions from Customer, usage of trade, course of dealing or performance, understanding, or agreement alleged to modify, vary, explain, or supplement these Terms shall be binding upon Border States unless subsequently made in writing and signed by each Party.

2. ACCEPTANCE

Acceptance of any order or request from Customer is subject to approval by Border States and, when applicable, Border States' suppliers. Border States reserves the right to accept or reject any order (or a portion thereof) without liability to Border States, including, without limitation, if Customer's credit becomes unsatisfactory to Border States, and/or to immediately change the terms of any credit extended to Customer.

3. QUOTATIONS AND PRICES

Quotations given by Border States to Customer are not an offer to sell but only an invitation for an order. Border States reserves the right to reject a purchase order, or portions thereof, for any reason or for no reason at all. Unless otherwise expressly agreed to by Border States in writing, prices shall be based upon the price in effect at the time of Border States' shipment of each order. Prices and other information shown in any Border States' publication (including product catalogs, brochures, and websites) are subject to correction or change without notice. Products may be substituted by Border States and may not be identical to catalog or website published descriptions and/or images (including such Products' country of origin).

Prices listed do not include charges for shipping, handling fees, taxes (use, excise, value added, or similar), duties, and/or similar charges ("Charges"). Customer shall pay all Charges when due, including any associated penalties. Customer shall indemnify Border States for all Charges set forth herein, including legal expenses reasonably incurred by Border States, due to Customer's failure to pay any Charges.

4. PAYMENT

Customer agrees to pay for all Products by the due date according to the terms of sale stated on each invoice or otherwise agreed to in writing with Border States. Credit availability shall be at the sole discretion of Border States and may be terminated or changed at any time by Border States in its sole discretion. Border States specifically reserves the right to require payment in cash for any shipment or delivery.

Border States may add a monthly service charge of the lesser of 1.5% or the maximum permitted by law for all accounts not paid by the net due date. In addition to other rights and remedies Border States may have at law or in equity, Border States reserves the right, in its sole discretion, to: (a) withhold deliveries, shipments, or performance of services; (b) impose or revise any credit limits on Customer's purchases; and/or (c) cancel any purchase order(s), when Border States deems itself insecure with respect to Customer's ability to pay for Products. Border States' acceptance of any payment from Customer without the accrued late fee shall not be deemed to be a waiver of such accrued late fees. Any lien rights or legal remedies for non-payment asserted by Border States shall be governed by the laws of the state where the Products were delivered. To the extent permitted by law, Customer will pay all reasonable costs and expenses, including attorneys' fees, collection agency fees, and court costs, incurred by Border States in connection with any collection action for payment of amounts due.

5. DELIVERY

- 5.1. All sales are made F.O.B. SHIPPING POINT, unless otherwise mutually agreed in writing by Customer and Border States. Right, title, and interest in and to Products shall remain with Border States until such Products have been paid in full. Customer agrees to indemnify, defend, and hold Border States harmless from any and all losses arising out of all claims, suits, and/or demands relating to the right, title, and/or interest to the Products by Border States while still at Customer's risk. Border States may, in its sole discretion, without liability or penalty, make partial shipment of Products to Customer. Each shipment or delivery shall be considered a separate and independent transaction.
- 5.2. Special routing or transportation methods requested by Customer may increase delivery costs. Such increases will be billed to Customer. Items quoted with transportation charges prepaid and allowed are based on shipment that falls within each manufacturer's transportation allowance policy (e.g., a single shipment). Any change(s) in quantities or destination, or special release(s), may cause a price increase to Customer.
- 5.3. Shipment or delivery dates are the best estimates of Border States and its suppliers and are not guaranteed. While Border States will make commercially reasonable efforts to meet all estimated delivery dates, IN NO CASE WILL BORDER STATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES (WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE) ARISING FROM ANY DELAY IN SHIPMENT OR DELIVERY, REGARDLESS OF WHETHER BORDER STATES KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- 5.4. Border States shall not be liable for any losses, damages, or delays in delivery or other failures in performance due to, without limitation, acts of God (including fires, floods, epidemics, etc.), political/social unrest, acts or threats of terrorism, acts of the Customer, quarantine restrictions, computer or electronic interruptions, failure of its suppliers to ship or deliver on time, transportation embargoes, inability to secure products from vendors or suppliers at reasonable prices or in sufficient amounts through usual sources of supply, or any other circumstances beyond Border States' reasonable control.

5.5. Border States' responsibility for all shipments ceases immediately upon the transportation company's receipt of the Products in good condition. Upon delivery of the Products to Customer, Customer is responsible for confirming that the Products have not been damaged during shipment, and if damaged, a claim must be made with the transportation company immediately.

6. LIMITED WARRANTY

Border States warrants that Products sold shall be free of any security interest. Border States also warrants that all services will be performed in a professional manner consistent with generally accepted industry standards.

Customer acknowledges and agrees that Border States is a distributor and does not manufacture, design, or fabricate any of the Products sold or otherwise provided to Customer. Manufacturers and sub-suppliers of the Products provided to Customer by Border States are not subcontractors, agents, representatives, or employees of Border States, and shall not be considered as such.

ANY DESCRIPTION OF THE PRODUCTS CONTAINED IN/ON ANY BORDER STATES' DESCRIPTION, QUOTATION, PURCHASE ORDER, ORDER ACKNOWLEDGEMENT, BILL OF LADING, OR SALES INVOICE IS FOR THE SOLE PURPOSE OF IDENTIFYING THE PRODUCT AND DOES NOT CONSTITUTE A WARRANTY THAT THE PRODUCTS SHALL CONFORM TO THAT DESCRIPTION. CUSTOMER AGREES THAT BORDER STATES HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE PRODUCTS SUPPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR REPRESENTATION AS TO: (I) THE DESCRIPTION, CONDITION, DESIGN, QUALITY, OR PERFORMANCE OF THE PRODUCTS; (II) THE MERCHANTABILITY OR FITNESS OR SUITABILITY OF THE PRODUCTS FOR A PARTICULAR USE OR PURPOSE, WHETHER OR NOT DISCLOSED TO BORDER STATES; AND (III) DELIVERY OF THE PRODUCTS FREE OF THE RIGHTFUL CLAIM OF ANY PERSON BY WAY OF INFRINGEMENT OR THE LIKE. PRODUCTS WILL BE LIMITED SOLELY TO THE WARRANTY, IF ANY, EXTENDED BY THE ORIGINAL MANUFACTURER OR VENDOR TO THE EXTENT PERMISSIBLE THEREUNDER. Border States hereby authorizes Customer to make or settle any claims under such warranties directly with any such manufacturer or vendor. BORDER STATES DOES NOT WARRANT AND WILL NOT BE LIABLE FOR ANY DESIGN, MATERIAL, OR CONSTRUCTION CRITERIA FURNISHED OR SPECIFIED BY CUSTOMER AND INCORPORATED INTO THE PRODUCTS. Certain state laws do not allow limitations on implied warranties or the exclusion or limitation of certain damages. If these laws apply, some or all of the disclaimers, exclusions, or limitations set forth above and below may not apply and other rights may be available to Customer.

7. DISCLAIMER AND LIMITATION OF LIABILITY

Border States' suppliers and manufacturers provide it with various statements and/or certifications about Products. BORDER STATES MAKES NO WARRANTIES AND EXPRESSLY DISCLAIMS ALL LIABILITY TO ANY CUSTOMER OR USER WITH RESPECT TO THE ACCURACY OF THE INFORMATION OR THE SUITABILITY OF THE RECOMMENDATIONS, including, but not limited to, information regarding country of origin, Export Control Classification Number, Buy America/n compliance, or compliance with other applicable laws and regulations (including, without limitation, MSDS information or RoHS/REACH compliance). BORDER STATES WILL NOT BE LIABLE FOR ANY ERRORS WITH REGARD TO SAME. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY RELIANCE ON OR USE OR RE-USE OF ANY INFORMATION, AND FOR USE OR APPLICATION OF ANY PRODUCTS.

Border States' maximum cumulative liability relative to all other claims and liabilities, including that with respect to direct damages and obligations under any indemnity, whether or not insured, will not exceed the cost of the Products giving rise to the claim or liability. CUSTOMER ACKNOWLEDGES AND AGREES THAT MANUFACTURER MAY HAVE ADDITIONAL LIMITATIONS OF LIABILITY, WARRANTY DISCLAIMERS, AND OTHER LIMITATIONS IN MANUFACTURERS' TERMS AND CONDITIONS OF SALE, WHICH CUSTOMER ACKNOWLEDGES AND AGREES APPLY TO CUSTOMER'S PURCHASE OF PRODUCTS HEREUNDER. CUSTOMER AGREES THAT IT HAS SELECTED THE PRODUCTS BASED UPON ITS OWN JUDGMENT AND DISCLAIMS ANY RELIANCE UPON STATEMENTS OR REPRESENTATIONS MADE BY BORDER STATES. ANY STATEMENT OR ADVICE (INCLUDING, BUT NOT LIMITED TO, ADVICE REGARDING THE QUANTITY OF GOODS NECESSARY FOR A PARTICULAR JOB, OR THE SUITABILITY OF A PARTICULAR PRODUCT FOR A PARTICULAR USE) IS PROVIDED SOLELY AS A COURTESY TO CUSTOMER AND IS NOT GUARANTEED. NO SUCH STATEMENT OR ADVICE SHALL SUBJECT BORDER STATES TO ANY LIABILITY WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHER GROUNDS.

UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED OFFICER OF BORDER STATES, PRODUCTS SOLD HEREUNDER ARE NOT INTENDED FOR USE IN OR IN CONNECTION WITH ANY SAFETY APPLICATION OR THE CONTAINMENT AREA OF A NUCLEAR FACILITY.

8. INDEMNIFICATION

Customer agrees to indemnify, defend, and hold harmless Border States and its officers, directors, employee-owners, agents, affiliates, successors, insurers, and permitted assigns (collectively, "Indemnified Party") against any and all liabilities, including, without limitation, losses; damages; deficiencies; claims; actions; judgments; settlements; interest; awards; penalties; fines; costs; or expenses of whatever kind, including attorneys' fees, expenses, costs, and fees related to enforcing any right to indemnification, and the costs of pursuing any insurance providers, incurred by Indemnified Party or awarded against Indemnified Party relating to, arising out of, or resulting from the Products, except to the extent such liabilities, claims, or expenses arise from Border States' sole gross negligence or willful misconduct. Customer shall not enter into any settlement without Border States' or Indemnified Party's prior written consent. IN NO EVENT SHALL BORDER STATES BE LIABLE FOR LIQUIDATED, INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

Notwithstanding any other provision contained in these Terms, Customer shall Indemnify and hold Border States harmless from and against all claims (including clean-up costs and loss(es) of oil, gas or hydrocarbons) arising from pollution, contamination, dumping or spilling of any substance and even if arising out of or attributable to the Negligence of Border States, but not to the extent attributable to Border States' willful misconduct.

9. CHANGES

Border States attempts to ensure, but cannot guarantee, that its quotations, sales orders, purchase orders, releases, authorizations, acknowledgments, and invoices issued pursuant to these Terms are complete and current. Border States reserves the right to correct any error, inaccuracy, or omission, or to change or update its content, without prior notice to Customer. Such errors, inaccuracies, or omissions may relate to price, product description, availability, or otherwise.

All Customer-requested changes, including those affecting the identity, scope, and delivery of the Products, must be in writing and are subject to Border States' prior approval and adjustments in price, scheduling, and delivery terms. Border States reserves the right to reject any change(s).

10. RETURNS

Returns must be made within ninety (90) days from the date of purchase and with original invoice. Special or custom orders may not be returnable. Returned Product(s) must be in original packaging, unused, undamaged, and in saleable condition. Customer is responsible for the method and cost of return to Border States. All returns will be subject to Border States' prior approval and its return policies in effect at the time, and a deduction may be made from credits issued to cover cost of handling, cancellation, and/or restocking fees. For approved returns, Border States will issue remaining credit only to the original payment method.

11. CANCELLATIONS

Customer may cancel an order prior to shipment only by written notice and upon payment to Border States of reasonable cancellation and restocking charges, including reimbursement for direct costs plus allowances for business costs. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Customer's specifications may equal the actual purchase price of the Products.

Border States reserves the right to refuse or cancel any orders (including, without limitation, orders containing any error, inaccuracy, or omission) at any time and for any reason whether or not the order has been submitted, confirmed, and/or Customer has been charged. If Customer has been invoiced or charged for the purchase and its order is canceled by Border States, Border States shall promptly issue applicable credit to Customer. Except for issuing such credit (as/if applicable), Border States shall have no liability or obligation to Customer with respect to any cancelled order.

12. COMPLIANCE

Customer certifies that it is not a restricted party as defined by the U.S. Government. Customer acknowledges that these Terms and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders, including, but not limited to, U.S. anti-corruption laws and regulations; U.S. export control laws and regulations; and U.S. anti-boycott and embargo regulations and guidelines. Except where otherwise agreed upon in writing by the Parties, all Products are sold for domestic consumption in the United States. Customer agrees to comply with all such laws, regulations, and orders, including, all requirements of the International Traffic in Arms Regulations and/or the Export Administration Act, as amended.

Border State is an Equal Employment Opportunity and Affirmative Action Employer.

13. BREACH

If Customer breaches any provision of these Terms excluding payment, Border States may notify the Customer in writing and request it to immediately rectify and correct such breach. If Customer fails to take any action satisfactory to rectifying and correcting such breach within ten (10) business days upon the issuance of the written notice, Border States may take actions pursuant to these Terms or pursue other remedies in accordance with laws. All rights and remedies of Border States hereunder are in addition to its other rights and remedies and are cumulative and not alternative.

Customer understands and agrees that supply chain interruptions and/or supplier/vendor delays may occur from time to time and that such temporary conditions shall not be deemed a material breach of these Terms by Border States.

14. CHOICE OF LAW AND DISPUTE RESOLUTION

The validity, performance, construction, and effect of these Terms shall be governed by North Dakota law. All disputes and conflicts between Customer and Border States arising from or under these Terms, or any transactions contemplated hereby, must be resolved first through good faith discussions and negotiations between upper management of the Parties. If the dispute cannot be resolved within forty-five (45) days from the date the matter was first brought by the disputing Party to the attention of the other Party, then either Party may elect to resolve the matter through mediation or legal action. Any action based on a sale by Border States to Customer shall be brought either in a State Court or a United States District Court located in Cass County, North Dakota. Customer hereby agrees and consents to venue in Cass County, North Dakota, and specifically and expressly agrees to the jurisdiction of said Courts. Each Party knowingly, voluntarily, irrevocably, and unconditionally waives any and all right to trial by jury in any action or proceeding arising out of or relating to these Terms or the transactions contemplated hereby.

Any action against Border States must be brought within twelve (12) months after the cause of action arises. Customer agrees that in the event it is necessary for Border States to commence legal action to enforce these Terms, Customer shall pay all costs incurred by Border States, including, without limitation, attorneys' fees, costs, and expenses.

15. MISCELLANEOUS

- 15.1. If any provision of these Terms is prohibited by law or held to be unenforceable, such unenforceability will not affect any other term or provision, and these Terms shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof. On such a determination, the Parties will negotiate in good faith to modify these Terms so as to effect the original intent of the Parties to the greatest extent possible within the limits of applicable law.
- 15.2. Each provision in these Terms is severable and independent of any other provision and is to be enforced as such. Each provision shall apply regardless of any other contrary provision set forth, and regardless of the form of action.
- 15.3. In the event Border States does not insist upon the performance of any of these Terms or exercising any right hereunder, Border States shall not be deemed to have waived such terms, conditions, or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right under these Terms.
- 15.4. The provision of these Terms to Customer by electronic means or by website reference (www.borderstates.com) shall be sufficient to bind the Parties to these Terms.