

BORDER STATES INDUSTRIES, INC.
TERMS AND CONDITIONS OF PURCHASE

1. EFFECT OF TERMS AND CONDITIONS

These Terms and Conditions of Purchase ("**Terms**") govern any and all purchases by Border States Industries, Inc., and its related entities ("**Border States**" or "**Purchaser**"), of goods and/or services from its vendors ("**Vendor**") (each a "**Party**" and, collectively, "**Parties**"), including, without limitation, purchases of hardware, firmware, and software products, training, programming, maintenance, engineering, parts, and other services (the "**Products**" or "**Services**"). Vendor's (i) acceptance of a purchase order ("**Order**"), or (ii) fulfillment of an Order from Border States shall constitute Vendor's specific and express agreement to these Terms. By agreeing to these Terms, Vendor also agrees to be bound and abide by our Privacy Policy and our Code of Conduct, found [here](#), incorporated herein by reference. By accessing our website, www.borderstates.com, Vendor agrees to abide by Border States' Website Terms of Use, found at <https://www.borderstates.com/termsAndConditions>. These Terms constitute the entire agreement between the Parties related to the subject matter hereof and supersede any prior or contemporaneous agreement between the Parties relating to the performance of the work under an Order. No terms and/or conditions from Vendor, 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 Border States' Order shall be defined as (i) Vendor's written acknowledgement or notice of acceptance of an Order; or, (ii) if Vendor fails to provide written acknowledgement or notice of acceptance within five (5) days of Vendor's receipt of an Order, the Order will be considered accepted on the fifth day; or (iii) Vendor's shipment or starting shipment of the Products; or (iv) Vendor rendering or commencing any of the Services ordered.

3. QUOTATIONS AND PRICES

Quoted prices shall be firm for thirty (30) days, and pricing will be that in effect at time of Order. The prices set forth in an Order are firm and shall account for the total amount due from Border States for the Products/Services, including, without limitation, duties, taxes, or any other charges agreed upon by Border States, subject to adjustment for any rebates or credits described herein or therein, and Vendor warrants that the prices for the Products and Services as provided to Border States are complete and no additional charges of any type shall be added without Border States' express written consent. Unless otherwise agreed in an Order, the prices for any Products or Services shall not exceed the pricing for similar goods or services offered by Vendor to its other clients, and, if at any time during the fulfillment of any Order, Vendor offers more favorable prices, terms, or conditions to any third-party client, Border States shall be entitled to such prices or terms and conditions for all Products and Services provided from and after the date of such offer to any such third-party client. Border States requires a 90-day notice of pricing increases.

4. INVOICING AND PAYMENT

As full consideration for the performance of the Services, delivery of the Products, and the assignment of rights to Border States as provided in these Terms, Border States shall pay Vendor the amount specified in the applicable Order upon receipt of proper invoices for work completed in accordance with these Terms and the applicable Order. Unless otherwise agreed by Border States, Vendor shall only invoice Border States for Products actually delivered and Services actually performed by Vendor. Invoices shall be sent electronically to apinvoices@borderstates.com. Payment terms for all undisputed amounts shall be 2% 10th prox Net 30 via credit card. Vendor shall complete the attached Credit Card Payment Form to arrange to be paid via credit card. Disputed invoices will be discussed and resolved by the Parties. Disputed invoices shall be paid within 30 days of resolution of the dispute.

Without prejudice to any other right or remedy it may have, Border States reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Border States to Vendor.

5. DELIVERY AND INSPECTION; REMEDY FOR NON-CONFORMING PRODUCTS

Delivery will be F.O.B. Destination (Border States' warehouse or other point of delivery directed by Border States). Border States will determine the method of shipment, routing of Products, and responsibility for payment of the delivery charges. Vendor shall deliver the Products in the quantities and on the date(s) specified in an Order or as otherwise agreed in writing by the Parties (the "**Delivery Date**"). Time is of the essence for all Orders, and Products must be delivered in accordance with these Terms. Vendor is solely responsible for all expenses, damages, losses, and reasonable storage costs incurred by Border States and arising from any delay in shipment or defect in performance of the Products or Services.

All Products shall be packed for shipment according to Border States' instructions or, if there are no instructions, in a manner sufficient to ensure that the Products are delivered in undamaged condition. Vendor must provide Border States with prior written notice if it requires Border States to return any packaging material. Any return of such packaging material shall be at Vendor's expense.

Border States has the right to inspect the Products on or after the Delivery Date. Border States, at its sole option, may inspect all or a sample of the Products to ensure such Products comply with its specifications as set forth in the Order. If Border States determines that all or a portion the Products are nonconforming or defective, Border States has the right, upon written notice to Vendor, to: (a) rescind the Order in its entirety and receive a full refund; (b) accept the Order in its entirety and receive a reasonable price reduction for all nonconforming Products; or (c) reject the nonconforming Products and receive replacement Products from Vendor. If Border States requires replacement of the nonconforming Products, Vendor shall, at its expense, promptly replace such Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the nonconforming Products and the delivery of replacement Products. If Vendor fails to timely deliver replacement Products, Border States may replace them with similar products from a third party, charge to Vendor the cost thereof (which shall be paid within 30 days), and terminate the Order for cause. Unless an Order is terminated, any inspection or other action by Border States under this Section shall not reduce or otherwise affect Vendor's obligations under the Order, and Border States shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

6. DELAY AND FORCE MAJEURE

Neither Party shall be liable to the other for any delay or failure in performing its obligations under an Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that Party, without such Party's fault or negligence, and which by its nature could not have been foreseen by such Party, or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Vendor's economic hardships

or changes in market conditions are not Force Majeure Events. Vendor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under the Order. If a Force Majeure Event prevents Vendor from carrying out its obligations under the Order for a continuous period of more than 30 business days, Border States may terminate the Order immediately by giving written notice to Vendor.

Unless otherwise agreed by the Parties, if a shipment or part of a shipment of Products is late and not caused by a Force Majeure Event, Vendor shall (a) immediately propose a new delivery date; (b) use best efforts to expedite delayed Products at Vendor's expense; and (c) issue Border States a refund (determined on a pro rata basis) of, or a discount (equal to the cost incurred by Border States as a result of such late delivery) on, the purchase price for Products delivered late. Border States may also, at its option, (i) cancel, without liability, a late Order or any portions of an Order delivered late, or (ii) cover for late Products by sourcing products from other supplier(s), and Vendor shall indemnify Border States against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendors' failure to deliver the Products on the Delivery Date.

7. LIMITED WARRANTY

Vendor warrants for a period of eighteen (18) months from the date of actual delivery, or such longer period as provided by the Vendor, that the Products and Services furnished shall (i) be free from defects in design, workmanship, and materials; (ii) conform to and be of the kind and quality described in the Order and any applicable plans and specifications, and comply with all other requirements of the Order; (iii) perform in the manner specified; (iv) be merchantable and fit for intended use; (v) be conveyed with free and clear title; (vi) be performed in accordance with standards of care, skill, and diligence consistent with recognized and sound industry practices, procedures, and techniques; and (vii) be free of the rightful claim of any person by way of infringement (including, but not limited to, patent, trademark, or copyright infringement) or the like. Vendor shall correct any nonconformance at its sole expense, as directed by Border States, by promptly: (i) repairing or replacing the non-conforming Products (and correcting any plans, specifications, or drawings thereby affected) in a timely manner; (ii) furnishing Border States any materials, parts, instructions, or on-site assistance as may be necessary to enable Border States or its customer(s) to correct or have corrected the nonconformity; (iii) reimbursing Border States for the full cost to replace any property of Border States that was placed in the custody of Vendor and was damaged by Vendor; or (iv) refunding the purchase price, or an appropriate portion thereof, to Border States.

Border States does not warrant and will not be liable for any design, material or construction criteria furnished or specified by Border States' customer and incorporated into the Products.

8. DISCLAIMER AND LIMITATION OF LIABILITY

In no case shall Border States be liable to Vendor for any incidental, direct, indirect, consequential, punitive, exemplary, or special damages (whether sounding in contract, tort, strict liability, or otherwise), regardless of whether Border States knew or should have known of the possibility of such losses.

Nothing in these Terms shall exclude or limit (a) Vendor's liability under Sections 7 and 9 hereof, or (b) Vendor's liability for fraud, personal injury, or death caused by its negligence or willful misconduct.

9. INDEMNIFICATION

Vendor shall indemnify, defend, and hold harmless Border States and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Party**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, costs and fees related to enforcing any right to indemnification under these Terms, and the costs of pursuing any insurance providers (collectively, "**Losses**"), incurred by Indemnified Party or awarded against Indemnified Party in a final, non-appealable judgment, relating to, arising out of, or resulting from any claim of a third party arising out of or occurring in connection with the Products and/or Services due to Vendor's negligence, willful misconduct, or breach of these Terms. Vendor shall not enter into any third-party settlement without Border States' or Indemnified Party's prior written consent.

10. INSURANCE

Vendor shall secure and maintain liability and property damage insurance so as to provide protection and indemnification against any and all claims or suits in connection with the Products and/or Services as contemplated herein. All insurance policies maintained by Vendor shall be underwritten by insurers which are rated A.M. Best A- or higher. Vendor shall furnish to Border States certificates issued by insurance companies acceptable to Border States, showing policies carried and the limits of coverage as follows:

- a. Workers' Compensation Insurance for Vendor's employees to the fullest extent of statutory limits, and Occupational Disease and Employer's Liability Insurance for not less than \$1,000,000 per accident.
- b. Commercial General Liability Insurance, including, but not limited to, Products and Completed Operations and Blanket Contractual Liability, as applicable to Vendor's obligations under these Terms, with limits not less than \$2,000,000 per occurrence and \$2,000,000 general aggregate. Coverage must be on an occurrence form. Limits may be satisfied with a combination of primary and excess coverage.
- c. Automobile Liability Insurance for all owned, non-owned and hired automobiles with limits not less than \$1,000,000 combined single limit.
- d. Excess/Umbrella Insurance in the amount of not less than \$5,000,000.

Border States shall be named as Additional Insured on all policies of insurance required in the above subsections 'b' through 'd', and a waiver of subrogation in favor of Border States shall be provided. Such insurance provided by Vendor shall be primary and noncontributory.

11. CHANGES

Any changes to or nonconformance of the Products and/or Services to be provided by Vendor (including, but not limited to, changes in process, manufacturing, third party suppliers, facility locations, etc.) must be approved by Border States in writing and prior to Vendor's delivery of such Products and/or Services.

12. RETURNS

Provided the Product is not a special-order Product, Products that are in new and resalable condition shall be returnable for 18 months following the date of delivery.

13. CANCELLATIONS

No Order may be canceled or modified by Vendor without prior written approval from Border States. Orders are not subject to deferred shipment by Vendor without Border States' written authorization. Border States shall have the right at any time to cancel all or any portion of an Order and to delay the date of delivery of some or all of the Products or Services to be supplied hereunder.

14. COMPLIANCE

Vendor certifies it is in compliance with and shall continue to comply with all applicable laws, regulations, and ordinances. Vendor has and shall maintain all licenses, permissions, authorizations, consents, and permits required to carry out its obligations under the Order. Vendor shall comply with all export and import laws of all countries involved in the sale of any Products under an Order. Vendor assumes all responsibility for shipments of Products requiring any government import clearance. Border States may terminate an Order if any government authority imposes antidumping duties, countervailing duties, or any retaliatory duties on the Products.

Vendor certifies that it is not a restricted party as defined by the U.S. Government. Vendor acknowledges that these Terms and the performance thereof are subject to 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. Vendor 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.

Vendor certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with a federal contract, grant, loan, or cooperative agreement, Vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Where Vendor is unable to certify to any of the statements in this certification, Vendor shall provide Border States an explanation in writing.

15. 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 Vendor 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 purchase by Border States from Vendor shall be brought either in a State Court or a United States District Court located in Cass County, North Dakota. Vendor 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.

16. MISCELLANEOUS

- 16.1. Border States is an independent contractor hereunder and no employee of either Party shall be deemed to be an employee of the other for any purpose whatsoever. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party shall comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to it as an employer and otherwise.
- 16.2. Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms without the prior written consent of Border States. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder.
- 16.3. 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.
- 16.4. All of Border States' rights and remedies herein are cumulative with, and non-exclusive of, any and all other rights and remedies available hereunder, at law or otherwise.
- 16.5. 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.
- 16.6. The provision of these Terms to Vendor by electronic means or by website reference (www.borderstates.com) shall be sufficient to bind the Parties to these Terms.