

## TERMS AND CONDITIONS OF SALE

This Agreement (defined below) is between Cymbet Corporation ("Cymbet") and the customer which performs under Section 1 below ("Buyer").

**1. TERMS.** These Terms and Conditions of Sale, the identity and quantity of Products (defined below) and the shipping instructions contained on any order for the purchase of Products submitted by Buyer and accepted by Cymbet, the most current written specifications, if any, developed and distributed by Cymbet regarding the Products or otherwise located on Cymbet's website at [www.cymbet.com](http://www.cymbet.com) ("Site"), or Buyer's specifications provided to Cymbet that Cymbet agrees to in writing, and any relevant information on a quotation, an order acknowledgement or invoice from Cymbet accompanying these terms are, together, the "Agreement" governing the sale of the Products to Buyer. Buyer accepts the Agreement as governing the sale of such Products to Buyer by: (a) delivering an order to Cymbet; (b) accepting delivery of Products from Cymbet; (c) paying the applicable price for the Products; or (d) any other statement, act or course of conduct of Buyer which constitutes acceptance under applicable law, whichever comes first. Any counteroffer or proposed addition to or supplement of or material variation to the material terms and conditions of the Agreement is hereby expressly objected to and rejected. If the Agreement is responsive to a prior offer by Buyer, then the Agreement shall be deemed an acceptance of such offer limited to the material terms and conditions stated in the Agreement, and any additional or supplemental terms or any material variance from the Agreement are expressly objected to and rejected. Any non-material variance from the terms and conditions hereof by the Buyer shall not operate as a rejection of the Agreement.

**2. SUBMISSION OF ORDER.** In order to be valid, Buyer shall submit all orders for Products in writing (whether through Cymbet's Site or otherwise), and any purchase order submitted by Buyer for Products must refer to the definitive Cymbet part number(s) (not just the Product name). Cymbet may at its discretion accept, reject or allocate Products to any order placed by Buyer and shall not be liable to Buyer, any of Buyer's customers or any other person for refusal or inability to accept or fill any purchase orders.

**3. PRODUCTS.** The products subject to the Agreement shall be those Cymbet products identified by Buyer in a purchase order which is accepted by Cymbet ("Products"). Buyer agrees to buy such Products, and Cymbet agrees to sell such Products to Buyer under and subject to the Agreement. Cymbet reserves the right to discontinue any Products at any time without notice.

**4. PRICING.** Unless specified in a quotation from Cymbet, the price for any Products is available from Cymbet's sales representatives/distributors or directly from Cymbet. Unless otherwise specified by Cymbet, prices for Products set forth in any quotation delivered to Buyer are firm for a period of thirty (30) days from the quotation date and shall be the price for Products actually scheduled for shipment in a purchase order placed during such period. Otherwise, prices are subject to **CHANGE** without notice. Unless otherwise specified, prices are quoted F.O.B. factory of origin. Prices exclude freight, insurance and other shipping expenses, and duties (including customs and brokerage fees), penalties and any other governmental charges. Buyer shall pay, or reimburse Cymbet for, all such amounts. Prices also exclude taxes, and prices are subject to increase in the amount of any taxes (excluding tax on net income) that Cymbet may be required to collect or pay upon the sale or delivery of the Products. Typographic or other errors in stated prices are subject to correction. All prices are quoted and due in U.S. dollars. Quantity price is based on each individual order's quantity. Sequential orders do not aggregate to achieve higher discount.

**5. PAYMENT.** Unless otherwise specified, Buyer shall pay Cymbet for Products and any additional charges without setoff or counterclaim within thirty (30) days of the date of Cymbet's invoice. Each shipment shall be considered a separate and independent transaction for which payment is due and shall be paid accordingly. Cymbet, at its option, may require prepayment, or C.O.D. payment. Cymbet may accelerate and demand immediate payment of any amounts owed Cymbet, cancel delivery or suspend performance if Cymbet reasonably determines that Buyer cannot pay amounts due hereunder when they become due or if Buyer fails to make any payment when due. Buyer shall make all payments as provided herein without regard to whether Buyer has made or may make any inspection of any Products delivered hereunder. Past due amounts bear interest computed daily at a rate equal to the lesser of one and one half percent (1½%) per month or the highest rate permissible under applicable usury law. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorney's fees and expenses. Buyer grants to Cymbet a security interest in the Products and proceeds thereof to secure payment of the purchase price of the Products and Buyer's related and incidental obligations to Cymbet. Buyer shall execute suitable financing statements for filing or such other documents as may be necessary or desirable for perfecting such security interest, and acknowledges that this document constitutes a proper security agreement to be used in connection with any such financing statement. Cymbet is authorized to file one or more financing statements relating to all or any part of the Products without the signature of Buyer where permitted by law. A photocopy or other reproduction of the Agreement or any financing statement covering the Products or any part thereof shall be sufficient as a financing statement where permitted by law.

**6. CANCELLATION OR MODIFICATION OF ORDERS.** Orders for standard Products cannot be canceled or modified within sixty (60) days of a scheduled shipment date, or after the Products become work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by Cymbet due to such cancellation or modification. For non-standard Products, all cancellations or modifications of orders by Buyer will be accepted only with Cymbet's prior written approval, and cancellation charges will apply. Buyer will accept delivery of, and pay for, all non-standard Products which are completed at the time of cancellation. Non-standard Products which are in the work-in-process inventory will be paid for by Buyer at a price based on the percentage of completion of such inventory applied to the price for the finished Product. For non-standard Products, Buyer shall also promptly pay to Cymbet: (a) costs of settling and paying claims arising out of the termination of work relating to Cymbet's subcontracts or vendors; (b) accounting, legal, and clerical costs; and (c) twenty percent (20%) of the purchase price of the portion of the order cancelled. Standard Products with minimum order requirements may be subject to cancellation charges as per non-standard Products in the event such minimum order requirements are not met as a result of any cancellation or modification. In addition to the rights set forth in Section 5, Cymbet may cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent; is adjudicated bankrupt; petitions for or consents to any relief under any bankruptcy reorganization statutes; or becomes unable to meet its financial obligations in the normal course of business.

**7. SHIPPING AND DELIVERY.** Shipment of Products may be scheduled over time under blanket purchase orders. Cymbet shall use commercially reasonable efforts to ship the Products in accordance with any agreed upon shipment date(s). However, Cymbet does not guarantee compliance with any such date(s) and Buyer agrees that Cymbet shall not be liable for any damages as a result of any delay in shipment for any reason. If no delivery schedule is stated in the order, Cymbet shall assign the earliest releases for Product which are reasonable for Cymbet production to achieve. Shipment of Products in the U.S. shall be F.O.B. Cymbet facility, shipment of Products internationally shall be F.C.A. Cymbet facility, U.S.A. (Incoterms 2000). Cymbet may tender Products in partial shipments. Cymbet will prepare the Products for shipment in accordance with reasonable and standard commercial practices. An itemized packing sheet will accompany each shipment. Title to and risk of loss for the Products shall pass to Buyer upon delivery by Cymbet to the common carrier.

**8. INSPECTION; ACCEPTANCE.** Buyer shall be deemed to have irrevocably accepted the Products unless Cymbet has received notice in writing from Buyer prior to Buyer's resale of Products, and in any event more than fifteen (15) days following Buyer's receipt of shipment, ("Inspection Period") of any packing shortages or of any other failure of the Products to conform to the terms of the Agreement. Any rejections of Products shall only be valid if Buyer notifies Cymbet in writing within the Inspection Period detailing the alleged nonconformance or defect to which the rejection relates and obtains a return material authorization number ("RMA") for the return of the Products (which is to be referenced on all return shipping documents). Buyer shall identify such defects or nonconformance in such manner, and provide such documentation with respect thereto, as Cymbet reasonably may require. Upon Cymbet's confirmation of right to return and issuance of an RMA, Buyer shall return nonconforming Products to Cymbet in accordance with Section 13. RETURNS FOR BUYER'S CONVENIENCE OR DUE TO BUYER ERROR ARE NOT PERMITTED. Adjustment will take the form, in Cymbet's discretion, of a replacement or repair of the defective or nonconforming Products, or a credit in the amount of the purchase price of the affected Products.

**9. INTELLECTUAL PROPERTY RIGHTS.** No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by Cymbet to Buyer under the Agreement. Any and all drawings, tooling, equipment, procedures, data, engineering changes, specifications, and documentation made, acquired or supplied by Cymbet in connection with any Products sold hereunder shall be and remain the exclusive property of Cymbet, and Cymbet owns all intellectual property rights in

the Products.

**10. LIMITED WARRANTIES; EXCLUSIVE REMEDIES.** (a) Limited Warranties. Subject to this Section 10, and Sections 11, 12 and 13 and any exceptions listed elsewhere in the Agreement, Cymbet warrants to Buyer (and not to any other person) that the Products which are **production level** component Products or system or board level Products will be free from defects in materials and workmanship and will substantially conform with applicable specifications for a specific period from the date of shipment, which period, the "Warranty Period", differs based on the type of Product purchased by Buyer, as follows: for Products which are component products, the Warranty Period is one (1) year; and, for Products which are systems or board level Products, the Warranty Period is ninety (90) days. The foregoing warranties shall not apply to any Products (i) which have been used in a manner not originally intended or specified for use by Cymbet either expressly or as specified in the Site from time to time, (ii) which have been abused or misused physically or electrically, (iii) whose leads have been clipped or soldered, (iv) on which the trademark have been defaced or obliterated, (v) which have been altered or modified, (vi) which have been installed or stored in a manner contrary to Cymbet's written instructions, (vii) which are non-production versions, such as beta and demonstration versions, engineering samples, or test and development components or systems containing such products, or (viii) for which Cymbet has not published a data sheet. (b) Procedure. Any claims for breach of the foregoing warranties shall only be valid if Buyer makes such claim within ten (10) days of discovery of the defect or nonconformity by notifying Cymbet in writing within the Warranty Period detailing the alleged nonconformance or defect to which the claim relates and obtaining an RMA for the return of the Products (which is to be referenced on all return shipping documents). Requests for return authorization must list types and quantities of Products involved, the reason for the request, information concerning operation conditions involved, the period of use, the Buyer's purchase order number and, where possible, the original invoice number covering the original purchase of the Products involved. Upon Cymbet's confirmation of right to return and issuance of an RMA, Buyer shall return nonconforming Products to Cymbet in accordance with Section 13. (c) **LIMITED REMEDY.** Cymbet's sole liability, and Buyer's SOLE REMEDY, for any breach of the foregoing warranties shall be for Cymbet, at its option, to replace or repair the defective or nonconforming Products, or to credit Buyer in the amount of the purchase price of the affected Products. Any repaired or replaced Products shall be warranted as set forth herein, provided that the period within which Buyer may make further claims shall be limited to the remainder of the original Warranty Period for the applicable Products (the Warranty Period shall be suspended during any period of repair or replacement). (d) Alteration of Limited Warranties. Cymbet reserves the right to modify these warranties in writing from time to time in its sole discretion. Any such changes, amendments, alterations or modifications shall be binding upon Buyer effective upon the delivery of new terms to Buyer containing such changes etc. for the next orders placed by Buyer hereunder.

**11. DISCLAIMER.** ALL SOFTWARE, DOCUMENTATION, DESIGN SERVICES PERFORMED RELATING TO PRODUCTS HEREUNDER, ALL NON-PRODUCTIVE LEVEL PRODUCTS (WHICH MAY BE DESIGNATED AS "DEVELOPMENTAL", "EXPERIMENTAL", "NON-PRODUCTIVE", "FOR EVALUATION PURPOSES" OR OTHER SIMILAR DESIGNATION), AND ALL REFERENCE DESIGN PRODUCTS ARE SOLD BY CYMBET ON AN "AS IS" "WITH ALL FAULTS" BASIS, UNLESS EXPRESSLY AGREED OTHERWISE BY CYMBET IN WRITING. THE EXPRESS WARRANTIES CONTAINED IN SECTION 10 ARE IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AND CYMBET EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT, WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE OR ANY OTHER MATTER AND ANY WARRANTIES THAT PRODUCTS WILL FUNCTION LIKE SAMPLES. No agent, employee, sales representative or distributor of Cymbet has any authority to bind Cymbet to any affirmation, representation or warranty except as stated in Section 10.

**12. NON-PRODUCTION LEVEL PRODUCTS.** Buyer acknowledges that use of non-production level Products (which may be designated as "developmental", "experimental", "non-productive", "for evaluation purposes" or other similar designation) or reference design Products is at Buyer's sole risk, and Buyer shall indemnify and hold Cymbet harmless from and against all claims, liabilities, losses, damages, penalties, fines (including reasonable attorney's fees and expenses) arising from or relating to such Products.

**13. RETURNED PRODUCTS.** Products returned under Sections 8 and 10 must be shipped, transportation prepaid, by the most economical method of shipment. Products that are rejected under Section 8 must be returned in original packing material (tubes, trays, etc) or industry accepted equivalent. Shipping costs will be credited on all Products found to have been validly rejected or returned under warranty. Excess transportation costs resulting from the employment of other than the most economical carrier will not be allowed. Cymbet accepts no liability for packing, inspection, labor charges, or other incidental costs in connection with any Products returned for rejection or under warranty. If returned Products are reasonably determined by Cymbet not to be defective or non-conforming under Sections 8 or 10, as applicable, the Products will be sent back to Buyer, and Buyer shall reimburse Cymbet all costs of handling, transportation and repair or replacement at Cymbet's prevailing rates. All Products returned which are replaced or for which a credit is given to Buyer shall become Cymbet's property.

**14. CYMBET'S INTELLECTUAL PROPERTY INDEMNIFICATION.** Except to the extent set forth in Section 12, Cymbet shall defend Buyer against any claims brought by an unaffiliated third party that the **production level** Products, used in a manner originally intended or specified for use by Cymbet either expressly or as specified in the Site from time to time, infringe any United States patent, United States copyright or trade secret; provided Cymbet is promptly notified in writing by Buyer upon Buyer's receipt of the claim, and Cymbet is given full and complete authority, information and assistance, at Cymbet's expense, for defense of same. Cymbet shall have the right to control the defense and settlement of all such claims. Cymbet shall pay damages and costs finally awarded against Buyer in such claim but shall not be responsible for any compromise or settlement made without Cymbet's written consent. In no event shall Buyer settle any such claim without Cymbet's prior written approval. In providing such defense, or in the event that such Products are held to infringe or the use of such Products is enjoined, or if in Cymbet's sole opinion the Product is likely to become the subject of such dispute, Cymbet shall have the right at its sole discretion to obtain the right for Buyer to continue using such Products, modify such Products so that they become noninfringing, or require the return of such Products and, if the return happens within one (1) year from the date of shipment of the Products, refund to Buyer the purchase price paid by Buyer to Cymbet for such Products. Cymbet's obligations under this Section 14 do not extend to claims arising from Cymbet's compliance with Buyer's design, specifications or instructions or the modification of the Products by parties other than Cymbet, from improper use, or arising from the use of the Products in combination with other products or in connection with a manufacturing or other process not supplied by Cymbet. The foregoing obligations state the entire liability of Cymbet and Buyer's exclusive remedy, and Cymbet shall have no other liability or obligation, with respect to any actual or alleged infringement by any Products.

**15. BUYER'S INTELLECTUAL PROPERTY INDEMNIFICATION.** Buyer shall indemnify, defend and hold harmless Cymbet for any claims, damages, losses, liabilities, penalties, fines, costs and expenses (including attorney's fees) arising either severally or jointly with Buyer, out of or based on a claim that any of the Products furnished under the Agreement infringe any third party intellectual property rights arising (a) from compliance with Buyer's designs, specifications, or instructions; (b) from the use of any Products furnished under the Agreement in combination with other products, (c) from improper use of the Products, (d) from the modification of the Products by parties other than Cymbet, or (e) in connection with a manufacturing or other process not supplied by Cymbet. Cymbet shall promptly notify Buyer in writing of such claim and give Buyer full and complete authority, information and assistance (at Buyer's expense) for defense of same.

**16. LIMITATION OF LIABILITY.** IN NO EVENT SHALL CYMBET BE LIABLE TO BUYER, OR ANY THIRD PARTY UNDER OR AS A RESULT OF THE AGREEMENT, WHETHER IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, TREBLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, THE COST OF LABOR, REQUALIFICATION, DELAY, LOSS OF PROFITS OR GOODWILL, EVEN IF CYMBET IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CYMBET'S AGGREGATE LIABILITY ARISING UNDER OR AS A RESULT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE, EXCEED THE PURCHASE PRICE PAID FOR THE RELEVANT PRODUCTS. THE FOREGOING LIMITATION SHALL APPLY EVEN IF THE EXCLUSIVE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

**17. LIFE SUPPORT POLICY: "WARNING: DO NOT USE IN LIFE SUPPORT."** CYMBET'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS PRIOR WRITTEN APPROVAL OF THE CEO OF

CYMBET. "Life support devices or systems" are devices which (a) are intended for surgical implant into the body, or (b) support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user. A "critical component" is any component in a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system or to affect its safety or effectiveness.

**18. MISCELLANEOUS PROVISIONS.**

- (a) **FORCE MAJEURE.** Cymbet shall not be liable for any damage or penalty for delay in performance or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of Buyer, act of civil or military authority, war, riots, concerted labor action, or any other causes beyond the reasonable control of Cymbet.
- (b) **PRODUCTION STANDARDS.** Unless otherwise specified by Buyer and expressly agreed to in writing by Cymbet, the Products furnished under the Agreement shall be produced in accordance with Cymbet's standard practices. All Products, however, shall be subject to trade practices and Cymbet's standard tolerances and variations.
- (c) **ERRORS AND OMISSIONS.** Cymbet makes every effort to ensure the accuracy of the information published on its Site. If an error is made, Cymbet reserves the right to refuse or cancel any orders placed in reliance upon the error or for Products affected by the error.
- (d) **EXPORT COMPLIANCE.** Buyer shall not, directly or indirectly, export any Products or technical data acquired under the Agreement or the direct product thereof to any country for which the United States government or any agency thereof, at the time of export, requires an export license or other governmental approval, without first obtaining such license or approval.
- (e) **GOVERNING LAW; JURISDICTION.** This Agreement shall be governed by and construed under the laws of the State of Minnesota and the applicable federal laws of the United States, exclusive of any provisions of the United Nations Convention on Contracts for the International Sale of Goods and without regard to principles of conflicts of laws. Buyer consents to the exclusive jurisdiction of the courts of the State of Minnesota and/or the Federal District Courts, State of Minnesota, for the purpose of resolving all issues of law, equity or fact arising out of or in connection with the Agreement and that venue for the purpose of all such suits shall be in the State of Minnesota only. The official version of the Agreement is the English version.
- (f) **HEADINGS.** Sections headings are for reference only and shall not affect the interpretation of the Agreement.
- (g) **NOTICES.** Any notice provided for in the Agreement shall be sufficient if in writing and if sent by registered or certified mail or personally delivered to Cymbet at Cymbet Corporation, 18326 Joplin Street NW, Elk River, MN 55330 or such other address as Cymbet may notify Buyer, or to Buyer at the latest address delivered to Cymbet. Notices shall be deemed delivered three days after mailing or on the date of personal delivery.
- (h) **ENTIRE AGREEMENT; SEVERABILITY.** Buyer acknowledges that the Agreement constitutes the entire agreement between Cymbet and Buyer and supersedes all previous and contemporaneous agreements and understandings, whether oral or written, between Cymbet and Buyer with respect to the subject matter hereof. In the event that any of the terms of the Agreement become or are declared to be illegal by any court of competent jurisdiction, such terms shall be null and void and shall be deleted from the Agreement, and all remaining terms of the Agreement shall remain in full force and effect.