

# Garrettcom Europe Ltd.

## Terms and Conditions of Sale

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### 1. Prices

Unless Otherwise stated in writing by Garrettcom Europe Ltd. (GarrettCom), all prices quoted expire thirty (30) days after the date of a quotation. All prices quoted are valid only if Buyer's requested delivery date (including any change orders) is within three months of the date on which the order is placed.

Unless otherwise stated in writing by GarrettCom, all prices quoted shall be exclusive of transportation, insurance, state and local use, sales, property (ad valorem) and similar taxes. All applicable taxes shall be assumed and paid by Buyer.

### 2. Payment Terms

Unless otherwise stated in writing by GarrettCom, payment terms are COD or irrevocable bank letter of credit. If credit is desired, Buyer shall provide acceptable credit information to GarrettCom and shall pay all invoices issued under this agreement within thirty (30) days from date of invoice. GarrettCom reserves the right to change the credit terms when in the opinion of GarrettCom the financial condition or previous payment record of Buyer so warrants. Should Buyer become delinquent in the payment of any sum due hereunder, GarrettCom shall not be obligated to continue performance.

### 3. Order Acceptance

Orders shall be in writing, sent by fax or mail, and shall include requested delivery dates and method of shipment. No order shall be binding upon GarrettCom unless accepted in writing by GarrettCom. GarrettCom shall use its best efforts to notify Buyer of acceptance and the assigned delivery dates within seven (7) days of receipt of the order. Partial shipment shall not constitute acceptance of the entire order, absent the written acceptance of such entire order.

### 3. Delivery dates

Delivery will be made in accordance with a schedule mutually agreed upon between GarrettCom and Buyer. GarrettCom will make every reasonable effort to meet any delivery date(s) quoted, but will not be liable for failure to meet the quoted delivery date(s) due to unforeseen circumstances or due to causes beyond its control.

### 4. Packing

All products shall be packed, if appropriate, for shipment and storage in accordance with standard commercial practices. All packing will conform to the requirements of carrier's tariffs.

### 5. Shipment

Except where stated, all prices are F.O.B. GarrettCom's plant in Fremont, CA. Buyer will pay all transportation and insurance charges. Normally, GarrettCom will ship in accordance with Buyer's shipping instructions. In the absence of specific instructions, or if the instruction are deemed unsuitable, GarrettCom reserves the right to ship by the most appropriate method.

Title to the products and risk of loss and damage shall pass to Buyer upon delivery to a common carrier, the carrier acting as Buyer's agent, or if there is no common carrier, upon delivery to Buyer.

### 6. Order of Precedence

These *Terms and Conditions of Sale* and any attachments hereto take precedence over Buyer's additional or different terms and conditions and constitute the entire understanding between the parties relating to the products purchased hereunder. Neither GarrettCom's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions.

### 7. Changes and Cancellations

Buyer may utilize written change orders without penalty for orders that have not yet been accepted by GarrettCom. For orders for standard products that have been accepted by GarrettCom but have not yet been shipped, Buyer may utilize written change orders provided that Buyer shall pay a re-scheduling fee equal to ten percent (10%) of the purchase price (net of freight, taxes and other charges) of the re-scheduled Products if Buyer's change order is received by Manufacturer less than five (5) days before the assigned delivery date.

### 8. Acceptance of Products

Acceptance shall be accomplished using test procedures or programs established by GarrettCom which are applicable to the products. Such acceptance shall be at the time of completion of final tests at GarrettCom's point of manufacture prior to delivery.

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### 9. Patent Indemnity

GarrettCom shall defend or settle any claim made or suit or proceeding brought against Buyer so far as it is based on an allegation that any product furnished hereunder infringes a patent of the United States, if GarrettCom is

notified promptly in writing and given information, assistance and the sole authority to defend or settle same at GarrettCom's expense, and GarrettCom shall pay all damages and costs finally awarded therein against Buyer. In case said product is in such suit held to infringe and the use of said product is enjoined, or in the case of a settlement as referred to above, GarrettCom shall have the option, at its own expense, to procure for Buyer the right to continue using said product; or replace same with a non-infringing product; or modify same so it becomes non-infringing; or grant Buyer a credit for the depreciated value of said product and accept return of same. Notwithstanding the foregoing, GarrettCom shall have no liability to Buyer for claims of patent infringement resulting from (a) the inclusion of any product into an allegedly infringing networking or communications system, or (b) modification of the products. Buyer shall hold GarrettCom harmless against any expense or loss resulting from infringement of patents or trademarks from compliance with Buyer's designs, specifications, or instructions.

THE FOREGOING STATES THE ENTIRE LIABILITY OF GARRETTCOM FOR PATENT INFRINGEMENT BY PRODUCTS FURNISHED HEREUNDER.

#### **10. Copyrighted Materials**

Unless otherwise specified, GarrettCom copyrighted materials may not be copied except for archive purposes, or to replace a defective copy.

#### **11. Warranty**

GarrettCom products are warranted against defects in materials and workmanship. The warranty period for each product is specified in documentation supplied with the product, or will be provided upon request at the time of sale. Unless otherwise stated, the warranty period is three years from the time title passes to Buyer.

In the event of malfunction or other indication of product failure attributable directly to faulty materials and/or workmanship, GarrettCom will, at its option, repair or replace the defective products or components at no additional charge as set forth herein. This limited warranty does not include service to repair damage resulting from accident, disaster, misuse, neglect, or modification of the product. Service under this warranty may be obtained by returning the product to GarrettCom, and only after receiving authorization from GarrettCom by issuance of a Return Material Authorization (RMA) number, with shipping charges prepaid. Products will be returned to Buyer after repair or replacement has been completed at GarrettCom's expense and by the carrier and method of delivery chosen by GarrettCom.

EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, GARRETTCOM GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, OR OTHERWISE.

GARRETTCOM'S LIABILITY UNDER THE WARRANTY SHALL BE LIMITED TO A REFUND OF THE BUYER'S PURCHASE PRICE. IN NO EVENT SHALL GARRETTCOM BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS BY THE CUSTOMER OR FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR BREACH OF WARRANTY.

#### **12. Miscellaneous**

a) Any notices required to be given hereunder shall be given in writing at the address of each party set forth in an attached quotation or purchase agreement, or to such other address as parties may substitute by written notice to the other.

b) Buyer may not assign this agreement or transfer any of its rights, duties and obligations herein without prior written consent of GarrettCom.

c) Failure by GarrettCom to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.

d) No U.S. Government Procurement Regulations required to be included hereunder shall be binding on either party unless specifically agreed to in writing prior to incorporation herein.

e) Typographical and clerical errors are subject to correction.

f) GarrettCom shall have the right to make substitutions and modifications in the specifications of products provided that overall product performance is not materially affected in form, fit, and function.

g) Any order issued hereunder shall be in all respects governed by the laws of the United Kingdom.

h) In the event that any provision(s) contained in this agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions and any partially enforceable provision shall, nevertheless, be binding and enforceable.

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