



## PARVUS CORPORATION Terms and Conditions of Sale

These Terms and Conditions of Sale ("Terms and Conditions") shall apply to all quotations and offers made by and purchase orders accepted by Parvus Corporation ("Supplier"). Supplier's acceptance of an order or a purchase order from a third party ("Buyer") is conditioned upon Buyer's acceptance of these Terms and Conditions, regardless of whether the Buyer accepts these Terms and Conditions by a written acknowledgment, by implication, or by retention of or payment for goods ordered hereunder. These Terms and Conditions may conflict with some or all of the terms and conditions on Buyer's form of purchase order or otherwise specified by Buyer or these Terms and Conditions may address matters not addressed in Buyer's purchase order or other documentation. Supplier's acceptance of Buyer's offer to purchase is made only on the express understanding and condition that **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER**, regardless of whether the Buyer accepts these Terms and Conditions by a written acknowledgment, by implication, or by retention of or payment for goods ordered hereunder. No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by Supplier. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

**1. QUOTATIONS:** Prices, specifications and dates for delivery referenced in Supplier's quotations are for information purposes only and shall not be binding on Supplier until all technical requirements have been agreed upon and Supplier has accepted Buyer's order. Quotations terminate if not accepted by Buyer within 30 days. In-circuit testing and functional testing, if applicable, will be included in each quotation. Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of international duties, foreign taxes, federal, state and local excise, sales and similar taxes.

**2. STATEMENT OF WORK; SPECIFICATIONS:** All quotations are based on the specifications, drawings, designs and other written information supplied in a writing signed by Buyer and approved by Supplier (collectively and individually, a "Statement of Work"). In the event of any inconsistencies or conflicts between these Terms and Conditions and any Statement of Work or other written arrangement, the provisions of these Terms and Conditions shall control unless such Statement of Work or other written arrangement (a) specifically refers to the particular provision of these Terms and Conditions that is to be superseded, and (b) is signed by both Buyer and Seller. Any ambiguity in any Statement of Work shall be strictly construed against the party that prepared such Statement of Work. Supplier reserves the right to alter or modify any Statement of Work in cases where Buyer's specifications are vague or incomplete. Supplier product information noted as "designed to meet" indicates the intent for the product to mechanically and electrically support compliance to specified military/civil standards, but that formal compliance verification has not yet been conducted. Every effort has been made to apply best engineering design practices based on previous experience with applicable military and commercial standards. Supplier product configurations shipped prior to formal Qualification Testing may vary, but represents as closely as possible the final production design. Compliance test reports for qualified designs can be made available to Buyer upon request". For those specifications (including hardware and software), standards, or qualification testing noted as "designed to meet", Buyer should contact Supplier to ascertain the latest status and schedule.

**3. NRE CUSTOM WORK:** All drawings submitted by Buyer for custom products or systems must be in a CAD format and acceptable to Supplier. Drawings must be labeled showing the direction of view (designation of front, back, side, etc. is especially critical on end caps or plates). All drawings should show dimensions to the center of cut outs for standard connectors (i.e. DB-9's, DB-25's, military grade connector holes, etc.). Non-standard cut outs should be dimensioned to center. All drawings are subject to approval by Supplier before Supplier work begins. As to custom work, Buyer shall be responsible for all costs and expenses associated with or related to design and development environmental testing, front-end engineering, and the procurement of parts and materials leading to prototypes. In no event shall Supplier be liable for any product or system warranties, damages, claims, product failures, system failures, or deficiencies related to or involving any drawings, designs or engineering submitted or supplied by or through Buyer in relation to any product or system sold to Buyer.

**4. CHANGE ORDERS:** Buyer may request a change in services or deliverables by submitting to Supplier a written change order request signed by Buyer, detailing the scope of such change request. Supplier shall evaluate the change request, and shall provide Buyer with an impact assessment addressing relevant factors including, without limitation, the necessity for a change in quoted prices or delivery schedules or in any other

of these Terms and Conditions or in any Statement of Work. Buyer shall indicate its authorization of such changed terms and its approval to make the requested changes or services or deliverables by signing the impact assessment. Any further work by Supplier on such order will be suspended and will not proceed until such written authorization has been received by Buyer. Additionally, Supplier may extend the delivery date as a result of the mutually agreed upon changes. All approved change order requests shall be deemed amendments to these Terms and Conditions or the Statement of Work, as applicable. Information, advice, approvals, or instructions from Buyer or Supplier representatives that are not acknowledged by the Buyer and Supplier in writing shall be deemed expressions of personal opinion only and shall not be binding upon Buyer or Supplier or affect either party's rights and obligations hereunder. Work on any product or system that is stopped or delayed by Buyer for any reason will be subject to a restart fee determined by Supplier. Any product or system prototypes delivered by Supplier will not be upgraded to one or more finished products without additional cost to Buyer, unless agreed by Supplier, in writing, prior to the start of work. Any Buyer request for changes to scheduled delivery dates will not be accepted by Supplier unless approved in writing, and may be subject to expedite or delay fees.

**5. PURCHASE OF THIRD-PARTY COMPONENTS, PARTS AND PRODUCTS:** Buyer shall be responsible, in Supplier's sole discretion and upon notification to Buyer, for advance payment for all third party components, parts or products specified for inclusion in any product or system ordered by Buyer. Such components, part, or products include, but are not limited to, software packages, processing cards/ chips, circuit board products, media drives, and removable storage devices. Buyer may also elect to purchase such items directly from the third-party source and provide them to Supplier. In no event shall Supplier be liable for any technical support, damages, warranty claims, product failures, system failures or deficiencies related to or caused by any such third-party components, parts or products. Buyer shall be responsible for all excess and non-cancellable and non-returnable ("NCNR") material procured for Buyers order(s). In the event a follow-on order is not awarded within 45 days of final shipment, Supplier will invoice Buyer for all excess and NCNR material. Stranded material caused by a Buyer change order will be invoiced upon implementation of the change order.

**6. PAYMENT/CREDIT:** At Supplier's sole discretion, first-time orders are payable in full, in advance, and in collected funds. An application for credit must be submitted to Supplier's Accounting Department for review and approval. Supplier reserves the right, in its sole and absolute discretion, to approve or deny credit for any reason whatsoever. Each completed credit application must be signed by someone demonstrated to be an authorized representative of the credit applicant. At any time, Supplier reserves the right to revoke any credit terms previously agreed upon. All orders involving shipments, deliveries or services shipped or performed outside the United States must be prepaid in full, in collected funds, prior to shipment or performance. Except as provided herein, standard payment terms are the balance due in full 10 days of the invoice date. All past due balances will accrue interest at the rate of 1.5% per month. Supplier may, in its discretion, determine at any time that Buyer's financial condition requires payment in advance, and, if such requirement is not met, Supplier may cancel the order or any part thereof and receive reasonable cancellation fees. If Buyer fails to make any payment due hereunder when due, Supplier may recover, in addition to the payment, interest thereon at the rate of 1.5 % per month where lawful,

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otherwise the maximum lawful monthly interest rate, and reasonable attorney's fees and costs.

7. **SHIPMENT:** All products will be shipped F.O.B. Supplier's premises and may be so shipped in several lots. Supplier shall make every effort to keep its delivery commitment; however, circumstances beyond the control of Supplier could delay production or delivery of material or equipment. In the event of such delay, the delivery date provided in the contract shall be extended by the period of time lost by the delay. In the absence of specific instructions, Supplier will select the carrier and ship "collect", but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Supplier. Buyer must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Supplier to Buyer upon delivery by Supplier to the possession of the carrier. Buyer must file any claims for loss, damage or misdelivery thereafter with the carrier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated at Section 10 (Warranties), below.

8. **CANCELLATION OF CUSTOM ORDERS OR BLANKET ORDERS:** Buyers desiring to cancel, in whole or in part, a system, custom or blanket order must notify Supplier of such request, in writing, anytime prior to shipment. Upon written acceptance by Supplier of any such cancellation request, Buyer shall be liable for all costs, expenses, and charges related to such order based upon the percentage of completion of all work performed through the date of acceptance of cancellation, the costs actually incurred by Supplier in relation to all materials purchased by Supplier for the related products or systems, and all other production and material costs incurred by Supplier, including, without limitation, document setup, revision changes, tooling charges, stranded, NCNR, excess material, and related procurement expenses, or as otherwise determined by Supplier. The foregoing costs shall also include charges for administrative expenses incurred in obtaining and stocking or restocking materials related to the order in question, and the production expense associated with production line shutdown. Supplier may accept standard product back for refund or exchange within 30 days of ship date, provided that Buyer returns the product in its original packaging with a copy of the original packing slip. A restock fee of 20% will apply. Damaged, modified or custom product will not be accepted for refund or exchange. Buyer must receive written authorization from Supplier before any order cancellation is approved, and will be subject to the terms & fees outlined above.

9. **EXPORT:** Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Supplier products, Buyer shall not export either directly or indirectly any Supplier product, or any system incorporating said product either in contravention of statute or regulation, including but not limited to International Traffic in Arms Regulations and the Export Administration Act, or without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government, including an export license, if applicable.

10. **LIMITED WARRANTY:**  
A. Supplier warrants that all equipment shall be free from defects in material and workmanship under normal use for a period, as detailed below, commencing from date of shipment to Buyer (in each case, the "Warranty Period"), except that Supplier does not warrant that operation of the software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be solely responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned to the original shipping point, transportation charges prepaid, within the applicable Warranty Period detailed below and upon examination Supplier determines to its satisfaction that such equipment is defective in material or workmanship (i.e. contains a defect arising out of the manufacture of the equipment and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration,

incompatibility with other components used by Buyer, improper installation, improper adjustment, improper repair, or improper testing), Supplier shall at its option repair or replace the equipment, shipment to Buyer prepaid. Supplier shall have reasonable time to make such repairs or to replace such equipment. Any repair or replacement of equipment shall not extend the applicable Warranty Period. This warranty is limited to:

<u>Product Type</u>	<u>Period from Date of Shipment</u>
• Parvus Active price list (with exception of Cisco-based products, which are Warranted for 90-days without Parvus service contract)	1-year
• All other goods (including Modified Std. & Customized Systems)	90-days
• Conformal Coated Products	30-days

B. Supplier's obligation to honor the above warranties is expressly conditioned upon Supplier's receipt of payment in full for the goods subject to the warranties. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 10 may, at Supplier's option, be terminated.

C. The foregoing warranty is exclusive and in lieu of, and Supplier expressly disclaims, all other representations, warranties and covenants, express or implied, with respect to the equipment and any defects therein of any nature whatever, including without limitation warranties of merchantability or fitness for a particular purpose. Supplier shall not be liable for, and buyer assumes all risk of, any advice or failure to provide advice by Supplier to buyer regarding the equipment or buyer's use of the same. Under no circumstances shall Supplier, its employees, officers or directors, be liable to buyer or any third-party under or for breach of these terms and conditions, any product or purchase order or related agreement under any tort, contract, negligence, strict liability, product liability, or other legal or equitable theory, whether or not foreseeable or foreseen, and buyer agrees to waive all such claims. Under no event shall Supplier be liable for any special, incidental, exemplary, indirect or consequential damages, regardless of whether Supplier has been advised of the possibility of such damages, and Supplier's sole and exclusive liability, and buyer's sole and exclusive remedy, for any nonconformity or defect in the products or anything done hereunder, in tort (including negligence), contract, or otherwise, shall be as set forth in subsection 10a hereof as limited by subsection 10b hereof. This exclusive remedy shall not have failed of its essential purpose (as that term is used in the uniform commercial code) provided that the seller remains willing to repair or replace defective equipment (as defined in subsection 10a) during the warranty period within a commercially reasonable time after receiving such equipment. Supplier's limit of liability shall not, in any event, exceed the amount paid by buyer for the goods giving rise to any claim. Buyer specifically acknowledges that seller's price for the goods ordered hereunder is based upon the limitations of Supplier's liability as set forth in this contract.

11. **RETURN MATERIAL AUTHORIZATION (RMA):** In the event that any product or system requires warranty or repair service, a Return Material Authorization (RMA) number MUST BE OBTAINED FROM Supplier BEFORE such can be returned. All returns must be shipped, freight prepaid, to Supplier. No unauthorized returns will be accepted within Suppliers facilities. To obtain an RMA, the following information must be supplied: product name and part number, serial number, and detailed description of the problem. Following receipt of any request for an RMA, Supplier shall inform Buyer of the warranty status of such return. Products or systems returned under a valid warranty claim shall be repaired or replaced at no expense to Buyer, other than costs incurred in returning the same to Supplier. Should a returned product be diagnosed as "no trouble found", Supplier will contact Buyer for technical resolution before the product is returned to Buyer. With regard to out-of-warranty products or systems, no repair work shall proceed without receipt of a new Purchase Order or written

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authorization from Buyer related to such repairs. If a preliminary assessment indicates that the costs associated with any such repair will approach or exceed original price of the product or system, then repairs may not be undertaken, and Buyer will be notified. All work performed on out of warranty products or systems is warranted for 30 days from the date of return shipment to Buyer, provided that Buyer notifies Supplier of any warranty claim related to such repairs within such 30 day period.

**12. INTELLECTUAL PROPERTY:** Supplier is and shall remain the sole and exclusive owner of any and all rights in any intellectual property created, designed, or conceived by Supplier in connection with or arising out of the work performed by Supplier. No work performed by Supplier shall be considered a work made for hire. Supplier grants Buyer only a limited, nonexclusive, royalty-free license to use the intellectual property embodied in any product or system provided, supplied or sold by Supplier as necessary for Buyer to utilize such product or system. Nothing in any development agreement or otherwise shall be construed as vesting in or transferring to Buyer any ownership of any intellectual property rights. Buyer shall indemnify, defend and hold Supplier harmless against any expense, damages, attorneys' fees, costs or losses resulting from any suit or proceeding brought for infringement of patents, trademarks, copyrights, trade secrets, or for unfair competition arising from compliance with Buyer's designs or specifications or instructions. Supplier shall not be liable for any costs or damages incurred by Buyer as a result of any suit or proceeding brought against Buyer and Buyer will indemnify, defend and hold Supplier harmless from any expenses, damages, attorneys' fees, costs or losses resulting from any suit or proceeding brought against Supplier, either severally, or jointly with Buyer, to the extent such suit or proceeding is based upon or arises from claims that use of any product or any part thereof, furnished hereunder, in combination with products not supplied by Supplier constitute either direct or contributory infringement of any patent, trademark, copyright of the United States.

**13. FORCE MAJEURE:** Supplier shall not be liable for any failure to perform due to unforeseen circumstances or causes beyond Supplier's control, including, without limitation, acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation facilities, fuel, labor or materials or any other causes beyond Supplier's reasonable control. In the event of any delay caused by such circumstance or event, the date of delivery shall, at the discretion of Supplier, be deferred for a period equal to the time of loss by reason of the delay.

**14. JURISDICTION; GOVERNING LAW:** Any claim or dispute involving any product or system produced, supplied or sold by Supplier shall be brought and maintained solely before a state or federal court or other tribunal with competent jurisdiction, located in Salt Lake County, State of Utah, United States of America, and any such claim or dispute shall be governed by the laws of the State of Utah, United States of America. Any documents associated with any such claim or dispute, including these Terms and Conditions, shall be construed in accordance with and governed by the laws of the State of Utah, United States of America.

**15. MISCELLANEOUS PROVISIONS:** These Terms and Conditions constitute the entire contract between Supplier and Buyer with respect to the subject matter herein and supersede all previous communications, whether oral or written. Any changes hereto must be in a writing signed by both Supplier and Buyer. In the event any provision of these Terms and Conditions is deemed unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in force. Supplier and Buyer expressly agree that the Buyer is an independent contractor in the performance of each and every part of the order hereunder and is solely responsible for all of its employees and agents and will indemnify Supplier from any and all claims, liabilities, damages, debts, settlements, costs attorneys' fees, and expenses of any type whatsoever arising on account of Buyer's activities or those of its employees or agents, including, but not limited to unauthorized representations or warranties (or the failure to disclaim effectively all warranties and liabilities on behalf of Supplier to the same extent disclaimed herein) to its customers.