



AeroVironment, Inc. Terms and Conditions of Sale – Industrial PosiCharge™ Products

1. SCOPE. The following Terms and Conditions of Sale – PosiCharge™ Products (the “Terms”) shall apply to all proposals made, and purchase orders accepted, by AeroVironment, Inc. (“AV”) for sales of Industrial PosiCharge™ systems and related products (the “Products”) by AV to the Customer identified in the accompanying Proposal (“Customer”), except to the extent the Terms conflict with an Agreement signed by both AV and Customer. These Terms and the Proposal together form the agreement between AV and Customer (“Agreement”). These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms shall govern when in conflict with any of the terms and conditions contained in Customer’s purchase order or other procurement document, and AV’s acceptance of Customer’s order is conditioned upon Customer’s acceptance of these Terms, irrespective of whether Customer accepts by a written acknowledgement, implication, or acceptance of and payment for Products ordered hereunder. AV’s failure to object to provisions contained in any communication from Customer, or failure to enforce these Terms, shall not be deemed a waiver of these Terms or any provisions thereof. These Terms are the only terms that govern AV’s Proposals. No other oral or written terms or conditions apply, including terms and conditions of any Customer purchase order. Any changes in these Terms must be specifically agreed to in writing by both parties before becoming binding on either party.

2. PRICE. AV proposals constitute an offer to sell Products upon these Terms (the “Proposal”). Unless otherwise stated on the Proposal, the prices included in any Proposal: (i) shall be valid for a period of thirty (30) days from its date; (ii) are in U.S. Dollars payable by check or wire transfer; and (iii) do not include shipping, transportation or installation charges, or sales, use, personal property or other taxes, including state and local privilege or excise taxes. All applicable charges will be included in AV’s invoice as separate items, which Customer agrees to pay or, in the case of taxes, to supply appropriate tax exemption certificates in a form satisfactory to AV.

3. TERMS OF PAYMENT. Unless otherwise stated on the Proposal, (a) If Customer’s creditworthiness has been established in advance, Customer shall pay all invoices by check or wire transfer in U.S. Dollars, net 30 days from invoice date; (b) If Customer’s creditworthiness has not been established, or Customer is located outside the United States, payment terms will be cash, letter of credit or wire transfer in advance prior to Products being shipped (based on AV’s Proposal), the final balance due to be reconciled within 15 days of Product delivery; and (c) AV reserves the right to require Customers located outside of the United States in situations where the Proposal includes installation, to pay Eighty Five Percent (85%) of the total Proposal price via cash, letter of credit or wire transfer prior to the Products being shipped, and the remaining Fifteen Per Cent (15%) upon completion of installation. Invoices not paid when due shall be subject to an interest rate of the lesser of 1.5%, or the maximum legal rate, of the invoiced amount for each month they remain unpaid. If a Proposal provides that any portion of the purchase price is not payable until completion of installation, the final payment shall be due net 30 days from the Acceptance Date as defined in Section 8 herein. If a Proposal includes AV installation services, but Customer elects to have the installation performed by personnel other than AV or AV’s contractor, Customer will not be entitled to any credit, refund or proration of AV installation charges. If Customer is delinquent in payment to AV, AV may immediately stop shipment of Products and future shipping of Products until all delinquent amounts and late interest are paid. Additionally, AV may at its option recover all costs incurred by AV or its agent, including without limitation reasonable attorneys’ fees, costs and expenses, in a collection action or any other legal action resulting from Customer’s breach of this Agreement. AV may re-evaluate Customer’s creditworthiness at any time, and modify or withdraw credit accordingly. Customer may not set off or recoup invoiced amounts or any portion thereof against sums that are due, may become due, or Customer claims to be due from AV.

4. PURCHASE MONEY SECURITY INTEREST. Customer’s order pursuant to this Agreement constitutes a security agreement, granting to AV a purchase money security interest in Product for the full amount of the purchase price. In order to perfect AV’s security interest, Customer agrees to execute all instruments that AV, as the secured party, elects to file, or in its sole discretion determines to be necessary to perfect or protect its security interest, in compliance with the Uniform Commercial Code (“UCC”) or any

state or federal law. Payment in full of the purchase price will release the security interest on that Product.

5. LEASE FINANCING. If Products will be leased by Customer through a third party lessor: (a) **Lessor Role.** Customer will present an order confirmation, in a format acceptable to AV that includes the purchase order number, model number, purchase price, lease term, shipping instructions, monthly payment amount, and identification of lessor and lessor’s address for AV’s acceptance and acknowledgment. Customer’s lessor should issue a purchase order or notice of assignment to AV within ten (10) days of Customer’s order confirmation. In the event Products are delivered by AV without an order confirmation from Customer’s lessor, Customer authorizes shipment of Products to Customer’s facility as indicated in Customer’s purchase order, authorizes AV to invoice Customer for the full purchase price, and agrees to pay AV the full purchase price net 30 days of delivery.

(b) **Storage.** If Customer cannot accept delivery of the Products as described in Section 5(a), Customer shall notify AV in writing and pay AV a storage accommodation fee calculated as Fifteen Percent (15%) of the Products’ full purchase price per year, for the period starting with the date the Products are available for delivery and ending with the later of (i) when AV receives documentation from Customer’s lessor agreeing to payment of the purchase price, or (ii) when Customer agrees to accept delivery of the Products with a commitment to pay AV the full purchase price. (c) **Customer Responsibility.** If Customer executes a leasing agreement with its lessor and Customer’s lessor fails to remit payment in full to AV for the Products, Customer will remit full payment of the full purchase price or of any deficiency in its lessor’s partial payment to AV.

6. DELIVERY. Unless otherwise stated on the Proposal, (a) Products shall be shipped FOB Origin, using AV’s standard commercial packaging and surface freight relationships; (b) Delivery time is not of the essence; and (c) AV is not liable for any loss arising from delay in delivery of Products. Customer is solely responsible for, and shall bear all expense, risk and direction obligation relating to any applicable (i) Special Product packaging and/or freight handling requests from Customer; and (ii) Products customs, duties and import/export compliance.

7. FACILITIES. If a proposal includes installation services by AV at one or more of Customer’s facilities or a third party location designated by Customer, Customer acknowledges and agrees that AV’s representatives shall have free, unannounced, immediate, safe and secure access to facilities where the Services are to be performed, during normal business hours and/or when the facility is actually in operation, for purposes of performing the installation. Customer agrees to provide AV’s representatives with all safety and other protections required by law for Customer’s own employees, including, without limitation, all U.S. Occupational Safety and Health Administration (“OSHA”) rules and regulations. Customer shall not attempt to condition the right of AV’s representatives to obtain free access to a facility upon the signing of any agreement, waiver or release which in any way purports to affect the legal rights or obligations of AV or its representative. Any such agreement, waiver or release, if signed by an AV representative, shall be considered void *ab initio* and shall be of no force and effect. AV shall, however, direct its representatives to exercise reasonable care to comply with any plant safety regulations generally applicable to personnel at any such Customer facility.

8. ACCEPTANCE. After the Products are delivered to Customer and installed at Customer’s facility/facilities, Customer shall execute and deliver to AV an Acceptance Certificate in a form provided by AV (“Acceptance Certificate”); provided, however, that Customer’s failure to execute and deliver an Acceptance Certificate upon completion of the conditions for acceptance set forth in this Section 8 shall not affect this Agreement’s validity, the Terms of Payment or Limited Warranty set forth herein. The “Acceptance Date” shall be the earlier of (i) the date Customer delivers the Acceptance Certificate to AV, (ii) the date of actual installation of the Products in Customer’s facility, or (iii) the date thirty (30) days after actual delivery of the Products to Customer’s facility, regardless of whether actual installation and/or an Acceptance Certificate have been completed.

9. INTELLECTUAL PROPERTY. (a) **Ownership.** All right title and interest in and to intellectual property of any kind associated with the Products and Software is reserved to, and belongs to, AV. (b) **No Reverse Engineering.** Customer agrees not to directly or indirectly disassemble, decode, peel components, decompile, modify, append, translate, copy, distribute, publicly



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display, disclose, sell, lease, loan, rent, transfer, assign, sub-license or otherwise reverse engineer or attempt to reverse engineer or derive source code from, or provide to third parties, the Products or Software or any portion thereof, or permit or encourage any third party to do so, or use or acquire any materials from any third party who does so. (c) **Software License.** Subject to these Terms, AV grants Customer a non-exclusive, non-transferable license, without right of sub-license, to use the software embedded in the Products, and any upgrades thereto (the "Software") solely (i) with the Products, (ii) for Customer's own use, (iii) as instructed in AV's printed installation and operation instructions. The Software is the property of AV, contains confidential and proprietary information of AV, and is protected by applicable patent and copyright laws and international treaties. Customer receives no other express or implied license or right to the Software under any patent, copyright, trademark, trade secret or other proprietary or intellectual property right. Customer shall receive and maintain the Software and other AV confidential information in confidence and agrees to use at least the degree of care that it uses to protect its own proprietary information, but no less than reasonable care, to prevent the unauthorized use of the Software outside of this Agreement. Customer's obligations under this Section shall continue indefinitely for as long as the Software continues to be confidential or proprietary to AV.

10. LIMITED WARRANTY. Subject to the limitations and provisions stated below, each Product is warranted to the original Customer to be free of defects in material and workmanship for a specific time period commencing from the date of shipment from AV or an AV-authorized stocking distributor.

Parts Warranted/Coverage Term:

Product	Coverage	Term
- Industrial Battery Chargers; BMID; Temp Sensors; Port Splitter - Charger Accessories (labor included only if AV installed)	Full Coverage – Labor, travel, freight and parts Parts – Cable management, stack lights, battery cooling systems, Plug-n-Charge, Cooling Dock and auto watering systems	1 Year
- Industrial Battery Chargers - Port Splitter	Parts – Control boards, displays, power supplies, DC contactors and fans Parts – Control board and DC contactors	1 Year additional (2 Years total)
BMID and Temp Sensors	Parts – BMID and Temp Sensor	2 Yrs additional (3 Years total)
Industrial Battery Chargers	Parts – AC contactors, Power-stage, IGBTs, inductors, capacitors, rectifiers	4 Yrs additional (5 Years total)
Industrial Battery Chargers	Parts – Main Transformer	9 Yrs additional (10 Years total)

Warranty Limitations. AV's total warranty expense with respect to any Product is limited to a maximum of the original purchase price of that Product. AV's warranty liability is limited to, at AV's option, repairing or replacing a Product, without charge, FOB AV's factory. To qualify for warranty coverage, the Product (a) must have been (i) installed, operated and maintained by competent personnel in strict compliance with AV's Installation, Operating and Maintenance manuals, and (ii) used as it was designed and specified for the application; and (b) must not have been (i) subject to abnormal operating conditions (including exposure to acid, chemical fumes, metallic dust, pressure washing above 120PSI (BMIDIII) or extreme temperatures), accident, abuse, misuse, negligence, or (ii) altered, modified or repaired by anyone other than AV or its authorized service providers (unless previously authorized in writing by AV). Continued use of a Product after discovery of a possible defect (unless previously authorized in writing by AV), or any evidence of an attempt to disassemble or reverse engineer the Product, voids all warranties. Unless the Proposal includes installation services by AV, AV will not be liable for any costs of removal, disposal, installation, transportation, or any other charges which may arise in connection with a warranty claim. This warranty does not cover replacement of expendable items, such as fuses, switches and connectors shipped with or integrated into the Products. **AV is the final arbiter of the presence of facts that support a conclusion of this warranty's applicability or being**

voided.

THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY AV WITH RESPECT TO THE PRODUCTS AND INSTALLATION THEREOF, AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO AV IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT AV'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR CUSTOMER'S USE OR PURPOSE.

To obtain service under this warranty, and prior to any Product return to AV by the Customer, the defective Product must have: 1) been installed by AV or in strict compliance with AV's Installation, Operating and Maintenance manuals, 2) been registered with AV by the Customer upon installation to activate the warranty, and 3) proof of purchase (including installation date), failure date, supporting installation and operation data.

11. FORCE MAJEURE. AV shall not be liable for any loss or damage resulting from failure or delay of performance due to unforeseen circumstances or causes beyond its control, including without limitation; strikes; riots; war; fire; flood; sabotage; acts of God; weather-related transit or shipping delays; inability to obtain materials or manufacturing facilities or compliance with any law, regulation or order, whether valid or invalid of any cognizant government body whether domestic or foreign.

12. LIMITATION OF LIABILITY. AV WILL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES OF ANY NATURE ARISING FROM PRODUCT INSTALLATION, USE OR ANY OTHER CAUSES WHATSOEVER. AV WILL NOT BE LIABLE FOR THE ACTS, WORKMANSHIP OR NEGLIGENCE OF CUSTOMER'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, SUPPLIERS OR AGENTS. AV WILL NOT BE LIABLE UNDER CONTRACT, TORT OR OTHERWISE, FOR PERSONAL INJURY, WRONGFUL DEATH, PROPERTY DAMAGE, LOSS OF ANTICIPATED PROFITS OR REVENUE, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, RESULTING FROM THE PRODUCT'S INSTALLATION OR USE, EVEN IF AV OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE HANDLING, POSSESSION OR USE OF THE PRODUCT.

13. GOVERNING LAW. The purchase of Products pursuant to this Agreement shall be governed by the laws of the State of California without regard for its conflict of laws provisions. Venue for any dispute regarding this Agreement or any resulting order shall be Los Angeles County, California, and Customer expressly consents to the jurisdiction of its state and federal courts in connection with this Agreement. Customer waives any other venue to which either party might be entitled by domicile or otherwise. If Customer is located outside of the United States, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or to any transaction made pursuant to this Agreement.

14. ENTIRE AGREEMENT. This Agreement constitutes the entire, complete and fully integrated agreement between AV and Customer with respect to the subject matter hereof, and supersedes all prior oral or written agreements, course of dealing or understandings relating to that subject matter. There are no other statements, representations, terms, covenants, warranties, guarantees, conditions, agreements or obligations in any way relating to AV's sale of Products to Customer, and Customer expressly disclaims any purported reliance on any prior oral and/or written representations. If any provision of these Terms is held invalid, void or unenforceable for any reason, that provision shall be severed and all other provisions of these Terms shall remain valid to the extent permissible by law. These Terms shall only be modified by a document signed by both Customer and AV. Under no circumstances shall any preprinted additional or different terms or conditions on Customer's purchase orders or invoices, AV's sales or marketing materials, or other business documents apply to Products purchased under this Agreement.