

**TERMS AND CONDITIONS OF SALE**

All sales made by Kambrian Corporation ("Kambrian") to its customers ("Buyer") are subject to these terms and conditions. Buyer's acceptance of these terms and conditions shall be made by either Buyer providing a purchase order ("PO") to Kambrian or Buyer's acceptance of any Product from Kambrian, whichever occurs first.

**1. ORDERING**

Prior to placing an order, Buyer must have an active Kambrian sales account number and Buyer's account must be current and in good standing. Buyer must provide Kambrian with complete Product order information as required by Kambrian. The Product order information will include without limitation the (1) Product description, (2) unit quantity, (3) Kambrian SKU number and/or vendor part number, (4) current unit price as provided by Kambrian, and (5) correct shipping address. For government or educational orders, Buyer will provide the above Product order information as well as (1) end user name and zip code and (2) government or educational contract number. Buyer personnel will identify, for each Product order, the ship-to destination as either Buyer, Buyer's customer, or to some other specified third party. Kambrian reserves the right to require additional information based on the requirements of the manufacturer or publisher of the Product. Buyer shall not disclose any confidential information when ordering from Kambrian. Buyer may place orders over telephone, via facsimile, and via Kambrian-approved electronic ordering methods only through persons who identify themselves as Buyer personnel and provide their Kambrian customer number prior to placing the order. Kambrian will have no obligation to confirm the validity of any order placed or the authority of the person placing an order in this manner. Buyer will disclose its Kambrian customer number only to its personnel with a need to know. Kambrian's acceptance of any order from Buyer is limited to these terms and conditions in their entirety without addition, modification, or exception. Any additional or different terms in Buyer's purchase order or submitted by Buyer in any form are hereby deemed to be material alterations hereto and notice of objection to them is hereby given. All orders below the applicable minimum order value are subject to additional fees. Orders

for direct shipment to Buyer's customers or Special Order Products may require prepayment and may be subject to additional fees. Kambrian will have no obligation to hold Product for future sale to Buyer if Buyer's order is incomplete, on hold, or if Buyer does not confirm it within 48 hours of notification from Kambrian that backordered Product is available for shipment. All Products sold to Buyer hereunder are for resale only. Additional fees may apply.

All Product pricing, description and availability information ("Information") provided by Kambrian, in any form, is the property of Kambrian. Kambrian hereby grants Buyer a limited, non-exclusive, non-transferable license to use the Information for Buyer's internal use only for purposes of Buyer's sales and purchases of Products sold by Kambrian. If Kambrian provides Information to Buyer electronically, Buyer agrees to update such Information regularly to ensure its accuracy. Buyer agrees to hold in confidence and not to directly or indirectly use, reveal, report, publish, disclose or transfer to any other person or entity any of the Information or utilize the Information for any purpose except as permitted herein. KAMBRIAN MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED ON THE INFORMATION. ALL INFORMATION IS PROVIDED TO BUYER "AS IS." KAMBRIAN HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO INFORMATION INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

**2. PRICE**

All prices are subject to change without notice and will be established at time of order acceptance by Kambrian. Order acceptance and sale by Kambrian occurs at time of shipment. Prices for backordered Products are not guaranteed. Additional fees may apply in accordance with Kambrian's policies in effect on the date of shipment.

**3. SHIPMENT AND DELIVERY**

**A. U.S. Shipments** - All Product shipments will be made FOB origin. For Products owned by Kambrian, title and risk of loss will transfer to Buyer

upon Kambrian tendering the Product for delivery to the carrier. Kambrian will ship Products using Kambrian's carrier of choice in accordance with Kambrian's shipping policies at the time of shipment. Additional fees and charges may also apply. If Buyer requests Kambrian prepay and bill Buyer for freight charges, Buyer agrees that Kambrian retains the right to choose the carrier. Buyer shall examine all Products upon receipt and shall notify Kambrian, as specified herein, of all discrepancies and refusal to accept delivery of purchased Product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused. If Buyer does not give Kambrian such notice as stated herein, Buyer agrees that such Products have been accepted by Buyer as of the date of shipment.

**B. International Shipments** - All shipments by Kambrian to Buyer or Buyer's customers at an address outside of the United States are subject to additional terms and will not be made unless Buyer and Kambrian have entered into Kambrian's International Sales Agreement (ISA). Under certain circumstances, Kambrian may choose to ship Product to Buyers located at an address outside of the United States. These shipments will be made FCA, Kambrian's warehouse via Kambrian's carrier of choice. Title and risk of loss will transfer to Buyer upon Kambrian tendering the Product for delivery to the carrier. Buyer will bear all the costs related to shipment and delivery. Buyer shall examine all Products promptly upon receipt and shall notify Kambrian of all discrepancies or if rejection is intended within five (5) calendar days after receipt. Such notice shall be reasonably detailed and shall specify the discrepancy or reason for rejection. Failure to give such notice within such time shall be deemed an acceptance of the Products as of the date of shipment. If the approval of any government or governing organization is required with respect to these terms and conditions or the distribution of the Products including without limitation, giving legal effect to these terms and conditions, protecting intellectual property and other rights in the Products or compliance with exchange regulations, Buyer will, at its expense, immediately take whatever steps may be necessary to secure such approvals. If any such approval requires or results in the deletion or amendment of any provision of these terms and conditions, then Kambrian will have the right to immediately terminate these terms and conditions.

#### 4. CREDIT AND PAYMENT TERMS

Buyer shall furnish to Kambrian all financial information reasonably requested by Kambrian from time to time for the purpose of establishing or continuing Buyer's credit limit. Buyer agrees that Kambrian shall have the right to decline to extend credit to Buyer and to require that the applicable purchase price be paid prior to shipment. Buyer shall promptly notify Kambrian of all changes to Buyer's name, address, or of the sale of substantially all of its assets. Kambrian shall have the right from time to time, without notice, to change or revoke Buyer's credit limit on the basis of changes in Kambrian's credit policies or Buyer's financial condition and/or payment record. Buyer shall not deduct any amounts owing from any Kambrian invoice without Kambrian's express written approval, which approval shall be contingent upon Buyer providing all supporting documentation for such deduction as required by Kambrian. A service charge of the lesser of one and one-half percent (1 1/2%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due. Credit cards (MasterCard, VISA and Discover Card) will only be accepted at the time of order. Payment by money orders or travelers check will be allowed only if the money order or travelers check is made out in the exact amount of the invoice; payment of one invoice through multiple money orders or travelers checks will not be permitted. Kambrian retains (and Buyer grants to Kambrian by submitting a purchase order) a security interest in the Products to secure payment in full, and Buyer agrees to execute any additional documents necessary to perfect such security interest. If Buyer fails to make timely payment of any amount invoiced hereunder, Kambrian shall have the right, in addition to any and all other rights and remedies available to Kambrian at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Buyer. Buyer shall pay all costs of collection including reasonable attorneys' fees. Any obligation of Kambrian under these terms and conditions to deliver Products on credit terms shall terminate without notice if Buyer files a voluntary petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Buyer, or if a receiver or trustee is appointed to take possession of the assets of Buyer.

#### 5. TAXES

Buyer shall bear applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes. Exemption certificates, valid in the place of delivery, must be presented to Kambrian prior to shipment if they are to be honored.

## 6. WARRANTY

Product warranties, if any, are provided by the manufacturer or publisher of the Products. Kambrian makes no warranties whatsoever. Kambrian's sole obligation (and Buyer's sole remedy) in the event of breach of any warranty shall be the repair or replacement of defective Products. IN NO EVENT SHALL KAMBRIAN BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. KAMBRIAN DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. KAMBRIAN MAKES NO WARRANTY, EXPRESS OR IMPLIED, OTHER THAN THOSE SPECIFICALLY SET FORTH HEREIN.

## 7. PRODUCT RETURNS

**A. Requirements** - Buyer must obtain a valid Return Material Authorization ("RMA") number from Kambrian for all returns. RMAs will be issued, at Kambrian's sole discretion, in accordance with these terms and conditions. Buyer must provide its account number and all other information as required by Kambrian for all returns. RMAs are valid for twenty (20) calendar days from the date of issuance. Buyer must allow for in-transit time for Products to be returned to Kambrian, as Kambrian must physically receive Products within the twenty (20) calendar days. RMAs will be issued for authorized returns under one of the following categories: (1) defective Products, (2) stock balancing, (3) billing or shipping discrepancies, or (4) damaged Product. Buyer is responsible for ensuring that the RMA number is clearly visible on the address label of the Product packaging when it is returned to Kambrian. Kambrian will refuse delivery of any boxes without a valid, clearly visible RMA number as noted above. Overgoods are unauthorized returns. Any Products received by Kambrian (i) without a valid RMA number, including Product shipments refused by Buyer or Buyer's customer except those damaged in transit from Kambrian to Buyer or from Kambrian to Buyer's customer, (2) later than

twenty calendar (20) days from the RMA date, or (3) in a condition unsuitable for resale (excluding defective Products), will be considered Overgoods. Kambrian will return Overgoods to Buyer or Buyer's customer, and will charge Buyer a \$100 processing fee per shipment plus related freight charges. If Buyer refuses the shipment of Overgoods from Kambrian or returns the Overgoods to Kambrian a second time without Kambrian's prior authorization, Buyer agrees to relinquish all right and title to and waives all claims against Kambrian for credit related to such Products. Notwithstanding anything to the contrary, Kambrian reserves the right not to authorize the return of Products that are no longer in production or are being produced or published by a manufacturer or publisher that (1) is insolvent, (2) has declared bankruptcy, or (3) will not accept returns from Kambrian.

**B. Defective Product Returns** - Defective returns are only for Products purchased from Kambrian that are inoperable or do not function in accordance with the specifications published by the manufacturer or publisher and are covered under the manufacturer's or publisher's warranty. All defective returns are subject to more restrictive manufacturer or publisher policies. Buyer may request an RMA for the return of defective Products, excluding Special Order Products, within forty-five (45) calendar days of invoice date. Buyer's defective returns will be limited to a maximum of 15% of the value of Buyer's Product purchases within the same vendor code as the defective Product during the forty-five (45) calendar days prior to the RMA date, less any prior defective returns during that period. Upon receipt of the defective Product for which the RMA was issued, Kambrian may test the Products and may return to Buyer, at Buyer's expense, any Products found not to be defective. Upon verification that the returned Product is defective, Kambrian may, at Kambrian's sole discretion, either (1) ship Buyer a replacement Product, or (2) provide Buyer a credit equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. Kambrian reserves the right to require Buyer to return defective Products directly to the manufacturer or publisher for replacement according to its defective Products return policy. Kambrian shall not be obligated to repair, replace, or issue credit to Buyer for Products rendered defective, in whole or in part, by causes external to the Products, including, but not limited to, catastrophe, power failure or transients, overvoltage on interface, environment extremes, improper use, maintenance

or application of the Products or use of unauthorized parts. Buyer shall bear all risks of loss when returning defective Products.

**C. Stock Balance Returns** - Stock balance returns are only for Products purchased from Kambrian that are unopened and unused and can be re-sold as new. All stock balance Products returned must be in the manufacturer's original packaging and in condition suitable for resale including, but not limited to, without price tags or stickers or additional shrink wrapping, clean, undamaged and complete ("Stock Balance Condition"). All stock balance returns are subject to more restrictive manufacturer or publisher policies. Buyer may request an RMA for the return of Products in Stock Balance Condition, except for Special Order Products, within ninety (90) calendar days of invoice date. Buyer's stock balance returns will be limited to a maximum of 15% of the value of Buyer's Product purchases within the same vendor code as the Product to be returned during the ninety (90) calendar days prior to the RMA date, less any prior stock balance returns during that period. Upon receipt of the Product for which the RMA was issued, Kambrian will verify the condition of the Product. Any Products that are not in Stock Balance Condition will be considered Overgoods. Kambrian will return Overgoods to Buyer and will charge Buyer a \$100 processing fee per shipment returned to Buyer plus related freight charges. Additional fees may apply to returned Products; e.g., re-box, label removal, re-shrink, etc., that are not in Stock Balance Condition. Upon verification that the returned Product is in Stock Balance Condition, Kambrian will issue a credit to Buyer equal to the lesser of the Product's invoice price or current replacement value less any applicable charges or fees. If Kambrian elects to restore returned Product to Stock Balance Condition instead of returning it to Buyer, the credit to Buyer will be net of Kambrian's costs to return the Product to Stock Balance Condition. Buyer shall pay all costs and bear all risks of loss when returning Products to Kambrian.

**D. Damaged Product Returns** - Damaged Product returns are only for Products purchased from Kambrian and shipped via Kambrian's carrier of choice that are damaged in transit from Kambrian to the Buyer or from Kambrian to the Buyer's customer. Buyer or Buyer's customer shall refuse any Product delivered in damaged condition. If the Product is received in damaged condition, Buyer shall notify Kambrian and request an RMA within three (3) business days of receipt of such Product. Failure to

notify Kambrian and request an RMA within such time shall be deemed an acceptance of the Product as of the date of shipment.

#### **8. BILLING AND SHIPPING DISCREPANCIES**

Billing and shipping discrepancies are for Products purchased from Kambrian that were invoiced or shipped incorrectly. These include lost shipments, short shipments, wrong sales, wrong shipments and pricing/invoice errors. Buyer may request an RMA for verified billing and shipping discrepancies within thirty (30) calendar days of invoice date. In addition, Buyer must notify Kambrian of any billing discrepancies related to Buyer's authorized returns within ninety (90) calendar days of RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of Buyer's rights to claim such discrepancy.

#### **9. PATENT AND TRADEMARK INDEMNITY**

KAMBRIAN SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS BUYER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY BUYER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS.

#### **10. LIMITATION OF LIABILITY**

KAMBRIAN SHALL NOT BE LIABLE TO BUYER, BUYERS CUSTOMERS, OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY BUYER, BUYERS CUSTOMER, OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO BUYER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORTIOUS OR FRAUDULENT ACTS OR OMISSIONS OF KAMBRIAN. IN NO EVENT SHALL KAMBRIAN BE LIABLE TO BUYER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY KAMBRIAN, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY BUYER HEREUNDER. IN NO EVENT SHALL KAMBRIAN BE LIABLE TO BUYER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS

OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH KAMBRIAN'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION KAMBRIAN SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. BUYER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. IN NO EVENT SHALL KAMBRIAN HAVE ANY LIABILITY FOR ANY PRODUCTS USED FOR AVIATION, MEDICAL, LIFESAVING, LIFE-SUSTAINING OR NUCLEAR APPLICATIONS.

#### **11. COMPLIANCE WITH U.S. EXPORT LAWS**

If Buyer delivers the Products to its customer who may use the Products outside the United States, Buyer acknowledges and shall advise its customer that the Products are controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States. Buyer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Buyer has obtained prior approval from the Department of Commerce. Buyer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the Department of Commerce.

#### **12. RELATIONSHIP OF THE PARTIES**

Buyer's relationship with Kambrian will be that of an independent contractor. Buyer will not have, and will not represent that it has, any power, right or authority to bind Kambrian, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Kambrian or in Kambrian's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Buyer and Kambrian as partners or as creating the relationships of employer / employee, franchisor /

franchisee, or principal / agent between the parties. Buyer will make no warranty, guarantee or representation, whether written or oral, on Kambrian's behalf.

#### **13. MANUFACTURER, PUBLISHER, AND SUPPLIER RESTRICTIONS**

If authorization for resale is required by the manufacturer or publisher of any Product, then Kambrian will not be obligated to sell such Product to Buyer unless Kambrian has received notification of such authorization from the manufacturer or publisher. All Products delivered to Buyer hereunder may have additional restrictions on their use required by the manufacturer or publisher. Buyer is solely responsible for ensuring its adherence to any and all such restrictions and requirements. If any supplier prohibits Kambrian from selling specific Products to Buyer, then Kambrian reserves the right not to sell such Products to Buyer.

#### **14. CHOICE OF LAW/CHOICE OF FORUM**

These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the internal laws of the State of California, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. Buyer agrees to exercise any right or remedy in connection with these terms and conditions exclusively in, and hereby submits to the jurisdiction of the State of California, Courts of Los Angeles County, California, or the United States District Court at Los Angeles, California. The state and federal courts situated in Los Angeles County, California will have non-exclusive jurisdiction and venue over any dispute or controversy that arises out of these terms and conditions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

#### **15. NOTICES**

All notices, requests, demands, and other communications that either party may desire to give the other party must be in writing and may be given by (1) personal delivery to an officer of the party, (2) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter

designate, or (3) facsimile subsequently to be confirmed in writing pursuant to item (2) above. Notices to Kambrian shall be sent to: Kambrian Corporation, 2707 East Valley Blvd., West Covina, California 91748, Attn: Legal Department.

**16. BINDING EFFECT/ASSIGNMENT**

These terms and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective representatives, successors and permitted assigns. Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment shall be void. Notwithstanding the foregoing, Kambrian may assign any purchase order received from Buyer to a subsidiary or affiliate upon notice to Buyer.

**17. PARTIAL INVALIDITY**

If any provision of these terms and conditions shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**18. NO WAIVER**

Failure or delay of Kambrian to exercise a right or power under these terms and conditions shall not operate as a waiver thereof, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

**19. CAPTIONS**

The captions used herein are for reference purposes only and shall have no effect upon the construction or interpretation of any provisions herein.

**20. GENERAL**

These terms and conditions, as published on Kambrian's Web site located at [www.kambrian.com](http://www.kambrian.com) at the time of sale, are the official terms and conditions of sale between Kambrian and Buyer and may be amended from time to time without notice at Kambrian's sole discretion.