

Terms and Conditions of Sale

These Terms and Conditions of Sale (**T&Cs**) constitute an integral part of RED-C Optical Networks Ltd.'s (**RED-C**) Order Confirmation, shall become an exclusive and binding agreement between RED-C and the Purchaser regarding the sale of the Product referred to in RED-C's Order Confirmation and supersede any and all other terms and conditions, whether in RED-C or in the Purchaser's purchase order, sales literature or otherwise, except for i). terms and conditions which are explicitly stipulated in a written agreement signed between RED-C and the Purchaser to that extent and ii). terms and conditions which are explicitly stipulated in RED-C's Order Confirmation.

1. Purchase Order (**Purchase Order**) placed by any Purchaser (**Purchaser**) shall be binding on RED-C only upon RED-C's written Order Confirmation of the Purchase Order. No form of acceptance except RED-C's written Order Confirmation sent to Purchaser shall constitute valid acceptance of Purchaser's order. Any such acceptance is expressly subject to all terms and conditions specified herein as well as to all terms and conditions specified in the Order Confirmation itself.
2. The "Products" referred to herein, shall mean the products specified in RED-C's Order Confirmation.
3. The Purchaser may not cancel, terminate, suspend performance of, or issue a hold on, any Purchaser Purchase Order, in whole or in part, without the prior written consent of RED-C, which consent, if given be upon terms that will compensate RED-C for any loss or damage there from, including but not limited to, the price of Products shipped to, manufactured for, or held separately for, the Purchaser, and loss of profit, incurred costs and a reasonable allocation of general and administrative expenses relating to the Products.
4. Products price specified in RED-C's Order Confirmation (**Price**) is the net amount to be received by RED-C, and does not include any taxes, levies, charges or fees whatsoever.
5. Prices are FCA RED-C factory [Incoterms, 1990] (shipping costs and risk of loss from the FCA point of shipment are the responsibility of Purchaser). All sales are final. Purchaser will pay for all shipping, insurance, importation, transportation, customs and other charges, from RED-C's FCA point.
6. Any payment not made on its due date shall bear interest at the rate of two percent (2%) per month, compounded monthly, until full payment is made.
7. RED-C will provide suitable packaging for the Products for normal shipping by air. Special packaging requested by Purchaser will be at Purchaser's expense.
8. Delivery dates are as specified in the Order Confirmation. All delivery dates are FCA RED-C estimated. The failure to perform or ship on such dates shall not be considered a breach by RED-C. Delivery shall be deemed made upon transfer of possession to the carrier at the FCA point.
9. RED-C shall not be responsible for any delay caused by, or related to, any circumstances of force majeure, including without limitation, fire, war, act of God, strike, governmental action, or any other circumstances beyond RED-C's control. Any delay, shall not relieve Purchaser of its obligations under the Purchase Order.

10. Subject to credit approval by RED-C and except for payment terms explicitly agreed upon in writing by the parties, payment terms shall be net thirty (30) days from the date of shipment. Where payments are to be made by means of a letter of credit, such letter of credit shall be opened, to the satisfaction of RED-C, within seven (7) days of the date of RED-C's Order Acknowledgment. Such letter of credit will be irrevocable and will be confirmed by an Israeli bank acceptable to RED-C. Failure to timely open such letter of credit will relieve RED-C from all of its obligations under this Purchase Order.
11. To the extent permitted in the country and state in which the Purchaser is located, title to the Products shall remain with RED-C until full payment for such Products is received by RED-C. In the event RED-C is not able to retain full title to the Products as aforesaid, RED-C shall retain a security interest in the Products until the entire balance of the Product price and all other monies payable hereunder are paid in full. Purchaser shall execute, upon request by RED-C, financing statements deemed necessary by RED-C to perfect its security interest. Purchaser hereby authorizes RED-C to file a copy of this security agreement or a financial statement with the appropriate authorities at any time thereafter as a financing statement in order to perfect RED-C's security interest.
12. If at any time Purchaser is delinquent in the payment of any invoice or is otherwise in breach of this Agreement, RED-C may, at its discretion, withhold shipment (in partial shipments) of any order or may, at its option, require Purchaser to pre-pay for further shipments. Without derogating from the above, failure to make full payment when due shall entitle RED-C, without liability, to repossess the Products and avail itself of any other legal or equitable remedy. Immediately upon RED-C's request, in the event of such failure to make full payment when due, the Purchaser hereby agrees and undertakes to return the Products to RED-C without any damage.
13. Risk of loss and damage shall pass to the Purchaser, upon delivery of the Products FCA RED-C Israel, after which Purchaser shall be responsible for loss, damage, theft, defects or destruction caused to the Products, due to any cause whatsoever. Purchaser shall be responsible for insurance of the Products from the time the risk of loss and damage passes to the Purchaser, as provided hereinabove. The Purchaser shall provide RED-C with a certificate of insurance as evidence of coverage.
14. Purchaser shall keep confidential and shall not disclose, divulge or reveal to any third party, without RED-C's prior written consent, any information received by it from RED-C with regard to the Products, their components, all manuals and any other written material provided to Purchaser by RED-C, unless designated non-confidential by RED-C. Such proprietary technology and information shall be used by Purchaser only to the extent reasonably necessary for the proper operation of the Products. Purchaser shall not, and shall not permit, abet or aid others to, translate, reverse engineer, decompile, disassemble, update, modify, reproduce, duplicate, copy, distribute or otherwise disseminate all or any part of the Products.
15. RED-C shall retain all proprietary rights of any kind whatsoever to any invention, software, improvement or design developed by RED-C during the course of the parties' relationship, including, but not limited to, all patent rights, and all common law rights provided however that Purchaser shall only have the limited right to use the Products delivered by RED-C hereunder.
16. RED-C makes no promise or representation that the Products shall conform to any federal, state, or local laws, regulations, ordinances, codes or standards. Prices quoted do not include the cost of any inspections or permits.
17. It is Purchaser's responsibility to apply for and to obtain any and all licenses, permits and other authorizations required for the import, sale and/or otherwise handling of the Products.
18. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against Purchaser, or in the event of the inability of the Purchaser to meet its debts as they become due, or in the event of the appointment, with or without Purchaser's consent, of any assignee for the benefit of creditors, or receiver, RED-C shall be entitled, at its absolute and sole discretion, to cancel any unfulfilled part of this Purchase Order without any liability whatsoever.
19. The parties agree that the Purchase Order, the Order Confirmation, the sale of the Products contemplated therein and all other matters or documents relating to this transaction (Transaction) shall be made and governed by the laws of the state of Israel, excluding its conflict of law rules. The competent courts of Tel Aviv shall have sole and exclusive jurisdiction over any dispute arising out of, or in connection with, the Transaction, including without limitation, its validity, interpretation, execution, performance, breach, termination, etc.

20. No modification of the T&Cs shall be effective unless set forth in writing and duly signed by RED-C and the Purchaser. No waiver of any default or breach, by any party, shall be deemed to be a waiver of any subsequent default or breach, by that party. Purchaser may not deduct or set-off, for any reason whatsoever, from the Price any sum, not authorized by RED-C in writing.
21. RED-C makes no warranties and relieves itself from any explicit or implied warranties whatsoever in respect of the Product, except for the Limited Product Warranty, the terms and conditions of which are stipulated hereunder.

Limited Product Warranty

22. RED-C warrants to Purchaser that the Product will be free of defects in material and workmanship under normal use and service for a period of 12 months following the date of delivery of the Product to Purchaser (the "**Warranty Period**").
23. If, during the Warranty Period, the Product becomes defective by reason of material or workmanship, and Purchaser immediately notifies RED-C of such defect, RED-C, as its sole obligation and liability, shall, at its option (i) supply a replacement Product; (ii) request return of the defective Product to its plant for repair; or (iii) if neither of the two foregoing options is reasonably available, RED-C may refund to the Purchaser the purchase price paid for the defective Product. All Products that are replaced will become the property of RED-C. Any replaced or repaired Product shall be covered by this Limited Warranty Certificate hereunder for a period of ninety (90) days from delivery thereof or for the remainder of the Warranty Period, whichever is longer.
24. Return of a defective Product must be pre-authorized by RED-C. Once authorized, the defective Product must be accompanied by a Return of Materials Authorization (RMA) number, to be marked on the outside of the package containing the defective Product and sent prepaid and packaged appropriately for safe shipment to RED-C. It is recommended that the returned Product be insured or sent by a method that provides for tracking of the package. In no event will RED-C be liable for any loss or damage to the Product, occurring during or as a result of the return shipment of the Product to RED-C. The repaired or replaced Product will be shipped to the Purchaser, at RED-C's expense not later than twenty one (21) days after RED-C receives the defective Product.
25. Replacement components utilized by RED-C may incorporate new or serviceable used parts as long as the serviced Product fully complies with its original spec., form fit and functionality. Replaced components shall become the property of RED-C and replacement components the property of Purchaser.
26. The warranty (including the warranty exclusions and limitations of liability), software license and patent indemnification provided by RED-C to Purchaser at the time of procurement of the Product shall apply to any replacement parts used by RED-C in the performance of RED-C's obligations hereunder, except that the length of the warranty shall not exceed the term of this warranty.
27. This Warranty is explicitly limited and subjected to remedial actions required to remedy malfunctions caused in the normal course of operation of the covered Products. This Warranty shall not apply to any request for such services resulting from other causes including, among all, the following:
 - a. Electrical work external to the Hardware and associated with any items not provided by RED-C.
 - b. Mishandling, abuse, fire, explosion, main power failure or acts of God.
 - c. Improper storage, installation or maintenance by a party other than RED-C.
 - d. Improper use, including use with electrically or mechanically incompatible equipment or not in accordance with the Specifications or improper operating environment.
 - e. Relocation, removal or reinstallation of the Product.
 - f. Painting or otherwise refinishing the Hardware.
 - g. Provision of consumables (e.g. printer cartridges, paper, disks etc.).
 - h. No trouble found with the Product.
 - i. Problems caused by products provided by other vendors or the Purchaser system.

28. THE LIMITED WARRANTIES SET FORTH IN THIS CERTIFICATE ABOVE ARE GIVEN TO PURCHASER ONLY, ARE NOT ENFORCEABLE BY ANY OTHER ENTITY OR PERSON, INCLUDING ANY PURCHASER OF PURCHASER, AND TO THE FULLEST EXTENT PERMITTED BY LAW ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY RED-C WITH RESPECT TO THE PRODUCTS. RED-C EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, TERMS OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION AND NON-INFRINGEMENT.
29. RED-C SHALL NOT BE LIABLE UNDER THIS WARRANTY FOR ANY DEFECT OR MALFUNCTION IN THE PRODUCT WHICH WAS CAUSED BY THE PURCHASER'S OR ANY THIRD PARTY'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO OPEN, REPAIR OR MODIFY THE PRODUCT OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE OF THE PRODUCT, OR BY ACCIDENT, FIRE, LIGHTENING, OTHER HAZARDS, OR ACTS OF NATURE.
30. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL RED-C HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF THE PRODUCTS, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF RED-C HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
31. IN NO EVENT SHALL RED-C BE LIABLE FOR ANY AMOUNT GREATER THAN THE AMOUNT PAID TO IT IN RESPECT OF THE PRODUCT GIVING RISE TO THE LIABILITY.
32. Some countries, states or provinces do not allow the exclusion or limitation of implied warranties, or the limitation of incidental or consequential damages for certain products supplied to consumers or the limitation of liability for personal injury, so the above limitations and exclusions may be limited in their applicability. When the implied warranties are not allowed to be excluded in their entirety, they will be limited to the fullest extent permitted by law.
33. All limitations, exclusions and restrictions to RED-C's warranty specified under the Limited Product Warranty shall constitute an integral part of these T&Cs.