



## **Terms and Conditions of Sale**

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY. THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU (“CUSTOMER”) ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING BUSINESS WITH HYPERCEL (“HYPERCEL”) TO PROVIDE PRODUCT, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND HYPERCEL HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information about These Terms and Conditions:

These Terms and Conditions constitute a binding contract between Customer and Hypercel and are referred to herein as either “Terms and Conditions” or this “Agreement.” Customer accepts these Terms and Conditions by making a purchase from Hypercel. These Terms and Conditions are subject to change without prior notice, unless otherwise agreed in writing by Hypercel and Customer.

Customer consents to receiving electronic records, which may be provided via a web browser or e-mail application connected to the Internet. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

Payment Terms: Payment of the purchase price for goods and/or services acquired from Hypercel shall be made pursuant to the terms set forth on each invoice, and Customer agrees to pay all charges according to the payment terms established in said invoice. The entire outstanding balance due on all invoices shall become due to Hypercel in full immediately upon default in the payment of any invoice. All orders are subject to approval of credit by Hypercel.

i Please pay from the invoice provided. A late payment charge of 1.5% per month (18% APR) will be charged on all invoices not paid within the defined terms. Our Customer Transactions team is available to help in all billing matters.

Accurate Information: Customer hereby certifies that the information furnished under this application and on his financial statements furnished in connection herewith is true and understands that Hypercel intends to rely upon such information as correct.

Hypercel’s Expenses: Customer shall pay to Hypercel all costs and expenses, including, without limitation, reasonable attorney’s fees of amount owed, and the fees of any collection agency and court costs, incurred by Hypercel in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereunder.



**Additional Transportation Charges:** Hypercel shall not be responsible for spotting, switching, demurrage or other transportation charges unless agreed to in writing.

**Force Majeure:** Hypercel shall arrange reasonably prompt shipment of Products, F.O.B. the point or points of delivery designated by Hypercel, pursuant to terms hereof, provided, however, that Hypercel shall not be responsible for delays in deliveries due to fire, flood, tornado, earthquake, war, riot, insurrection, strike, lockout, slowdown, epidemic, quarantine restriction, delay in transportation, car shortage, materials shortage, manufacturing facility shortage, accident at Hypercel's warehouse, boycott, embargo or any act or regulation of government of governmental authority (including, without limitation, preference, allocation or priority systems for government), force majeure and other contingencies beyond Hypercel's control resulting in impossibility of performance of Hypercel's duties and obligations hereunder.

**Risk of Loss:** Risk of loss, damage to and title to Products shall pass upon delivery thereof to Customer's carrier, F.O.B. Hypercel's California warehouse or other point or points of delivery designated by Hypercel as provided in these Terms. Upon receipt of shipment, it shall be the responsibility of Customer or the consignee receiving shipment to check materials and secure written acknowledgment from delivering carrier for any shortages, loss or damage. Notification of such shortages, loss or damage must also be made in writing to Hypercel.

**MANUFACTURER'S WARRANTY:** Hypercel shall pass through to Customer such warranties as provided to Hypercel for such Product for each Product purchased by Customer pursuant to this Agreement.

**Non-Defective (New) Returns:** Non-Defective (New) Returns: As a wholesale-oriented company, a \$100 minimum is required to process any RMA. Only for Drop Shipment customers a minimum of \$30 will be accepted. This will save time and shipping expenses for both companies. Customer may return unused products within 30 days from the date of the original purchase for a full credit or an exchange. If you return an item within 31-60 days, you may number request an RA for an exchange. For items returned within 61-90 days, there is a 20% re-stocking fee and shipping charges. No items can be returned after 91 days. Hypercel can only accept returns in the same condition and packaging in which they were shipped. Products must be in original condition, original product packaging, unopened, uncut, unmodified, and unused. Products must be returned at your expense through traceable means (e.g. UPS or FedEx), freight prepaid. Shipping charges are not refundable, and Hypercel does not pay for return shipping or international customs/duties.

**New Product Warranty:** Arrangements with suppliers and manufacturers do not allow Hypercel to accept open box returns nor to perform warranty service on new items that have a manufacturer's warranty. Please contact the manufacturer directly for technical support and warranty service. New items that fail during a manufacturer warranty cannot be replaced or repaired by Hypercel and must be returned directly to the manufacturer. In general, the manufacturer's warranties do not apply to defects caused by accidents, misuse, abuse, tampering, improper storage or out of date product.

**Damaged Products:** Title to goods being purchased passes to the Customer upon delivery of the goods to the Customer, unless otherwise specified. Loss or damage that occurs during shipping by a carrier selected by Hypercel is Hypercel's responsibility. Loss or damage that occurs during shipping by a carrier selected by Customer is Customer's responsibility. Regardless of Customer's shipping terms, Hypercel will assist Customer if the merchandise is verified as damaged in transit. If this occurs, please take the following action:



- ï Do not accept a visibly damaged product until the person making the delivery has endorsed the air bill/bill of lading with a statement of the extent of the damage.
- ï If damage is concealed and found after unpacking, retain all packing material and immediately call Hypercel. Concealed damage must be reported on the same day of delivery.
- ï Notifying Hypercel within 24 hours (ideally, the same business day) of damages is necessary for the Hypercel to assist Customer in filing a claim and making Customer eligible to receive credit from the carrier. If this step is followed, Hypercel can provide Customer with assistance on the claim with the freight carrier. When calling, please have the sales order number at hand.
- ï Please send Hypercel copies of all air bills/bills of lading and inspection reports.

Limitation of Liability: In no event shall Hypercel be liable to Customer under any legal theory whatsoever, regardless of whether characterized as tort, negligence, contract, warranty, or otherwise, for any loss of profits or other economic loss, including, but not limited to, such losses as (i) wages paid to Customer's employees, (ii) lost revenue, (iii) lost use of equipment, (iv) purchase, lease, or other acquisition of replacement, substitute, or temporary equipment, facilities, or services, (v) costs of capital, (vi) costs or losses related to downtime, (vii) manual labor costs, or (viii) any other indirect, incidental, special, consequential, or other similar damages arising out of any claim relating to Customer's purchases of goods or services from Hypercel, including losses resulting from Customer's general or particular requirements or needs, whether or not Hypercel, at time of contracting, had reason to know of such requirements or needs, and whether or not such losses could have been reasonably prevented by Customer by cover or otherwise. Hypercel's liability to Customer shall in no event exceed the purchase price of the nonconforming goods or to Hypercel's liability to Customer. The manufacturer/re-seller's warranties that Hypercel passes through to Customer typically contain limitations similar to those stated in this paragraph.

Governing Law and Forum: These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of California, United States of America; provided however that any and all disputes hereunder shall be decided exclusively by litigation in state or federal courts located within the Southern District of California, Los Angeles Division, United States of America.

### **Unconditional Guaranty**

Required for Terms Accounts and Bank Check

As consideration for the advancement of credit, we the undersigned individually, jointly, and severally agree as follows:

- 1) In the event Customer does not pay the amount due pursuant to the terms of the agreement between Customer and Hypercel, Customer agrees to pay a delinquent interest charge of 1-1/2% per month on the unpaid balance or the highest rate permitted by law, whichever is lower.
- 2) Hypercel may, at any time, without notice, cancel all credit available to Customer and refuse to make any further credit advances. In the event Hypercel determines that information contained on his credit application is false or misleading, or if Hypercel receives other false or misleading credit information from Customer of any kind or nature, Hypercel may without further notice cancel any orders in-house, or any deliveries in progress to Customer. Any false or misleading information by Customer shall be construed as a material default, and any invoices outstanding shall be immediately due and payable in full.



3) To pay all costs and attorney's fees incurred by Hypercel in relation to the interpretation, construction, or enforcement of any or all of our obligations under this credit application or personal guaranty, whether or not suit is filed.

4) That this agreement and personal guaranty has been entered into and is to be performed in the county of Los Angeles, and any action brought hereunder shall be brought in said county and state at the option of and in the sole discretion of Hypercel, and that the undersigned hereby unconditionally guaranties payment to Customer.

5) That we warrant and represent to Hypercel, that we are solvent and able to pay our obligations as they become due. We will notify Hypercel immediately if any become insolvent, and Hypercel can rely on this continuing representation of solvency in shipping products to Customer.

6) That Hypercel may use this agreement with any financial institution or credit reporting agency for the purpose of obtaining all personal and business financial information of any kind or nature whatsoever.

To the extent any terms on a purchase order executed by Customer are inconsistent with these terms, these terms shall take precedence. Any modification must be consented to by Hypercel and Customer in writing.

In consideration of the extension of credit by Hypercel Corporation (Hypercel) to Customer, the undersigned does jointly and severally personally guaranty to pay and be responsible for payment (and not merely collection) of all sums, balances, and accounts due Hypercel, including interest, collection charges, and/or attorney fees. This shall be an open and continuing guaranty and shall continue in force notwithstanding any change in the form of such indebtedness, or renewals, releases, modifications, or extensions granted by Hypercel, without obtaining any consent thereto, and until expressly revoked by written notice from the guarantor(s) to Hypercel. Any such revocation shall not in any manner affect guarantor(s) liability as to any indebtedness existing prior thereto. Guarantor(s) waive notice of the acceptance of this agreement notice of default or non-payment, and waive action required by any statute against the Customer. No delay on Hypercel's part in exercising any right hereunder or taking any action to collect or enforce payment of any obligation hereby guaranteed, either as against the Customer or any other person primarily or secondarily liable with the applicant, shall operate as a waiver of any such right or in any manner prejudice Hypercel's rights guarantor(s). Guarantor(s) agrees that in the event of any default any time by said applicant, Hypercel shall be entitled to look to guarantor(s) immediately for full payment without prior demand or notice. Guarantor(s) consents and agrees to be bound by all of the provisions of this agreement, including without limitations paragraph 1-7 above.

I grant Hypercel Corporation the right to access my personal credit report for the purpose of determining credit worthiness, regarding any present or future purchase(s) of all products sold by Hypercel Corporation.