

Terms & Conditions of Sale

As used herein, the below terms shall have the following meanings: (a) "Buyer" means the entity purchasing supplies or services from the Seller; (b) "Seller" means the entity providing products to or performing services for Buyer under the Contract; (c) "Contract" means either the contract agreement signed by both parties or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions of Sale, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement

1. Acceptance. Buyer accepts Seller's offer as made and all its provisions by transmitting in oral or written form a Purchase Order number, an authorization to proceed, or other request; by issuing any document which orders the same or equivalent goods or services referred to herein; by accepting or making any payment for any goods or services furnished hereunder; or by any Buyer conduct recognizing the existence of a contract between Buyer and Seller for the goods or services referred to herein. By accepting Seller's offer, Buyer accepts these Terms and Conditions of Sale. Seller expressly objects to any additional or different terms proposed by Buyer. No modification (including any additional or different term or conditions in the Buyer's acceptance) shall be binding on Seller unless Seller expressly agrees in writing to change this offer.

2. Modification. No modification or amendment shall be valid, enforceable or binding on Seller unless agreed to in writing by Seller. Prior courses of dealing, usages of the trade, and verbal agreements not reduced to writing and signed by Seller, to the extent that they modify, add to, or detract from the Contract, shall not be binding on the Seller. No cancellations or changes will be accepted by Seller without the prior written consent of Seller.

3. Payment Terms and Security Interest. Payment will be in United States (U.S.) dollars unless otherwise agreed to by specific reference in Seller's offer. Seller's invoices for goods delivered are due payable in full Net thirty (NET 30) days from date of shipment unless Seller's offer or quote specifically states otherwise. Buyer shall pay interest on past due accounts at one and one-half percent (1 1/2%) per month (which is equivalent to eighteen percent (18%) per annum) calculated from the date the payment was due until receipt by Seller of such payment in full, plus applicable interest, but in no event shall the interest charged exceed the maximum rate allowed by law on the overdue payment. Seller reserves a security interest in the goods pursuant to the Uniform Commercial Code (UCC) and in all proceeds thereof until payment in full of the purchase price. Buyer shall execute and deliver to Seller such UCC financing statements and other documents as may be requested by Seller for the purpose of perfecting Seller's security interest in the products and proceeds. In no event shall Buyer make any setoff or reduction of amounts owed by Buyer to Seller by reason

of any Buyer claim or demand against Seller, whether alleged by Buyer to arise under this Contract, in tort, or otherwise. Any such setoffs or deductions by Buyer shall constitute a material breach of this Contract. Tooling shall be invoiced as follows: one half at order placement, one half upon sample submission from completed tools.

4. Taxes, Customs or Duties. The sales price shown on the face hereof does not include any taxes, custom fees, duties or other fee of any nature imposed on the goods provided hereunder ("Purchased Items"). Purchased Items, their sale, transportation, delivery, use or consumption, and any such tax or fee shall be paid by Buyer unless Seller has agreed otherwise in writing and/or Buyer furnishes the Seller with exemption certificates acceptable to the appropriate taxing authority.

5. Shipment. Shipping terms for Purchased Items are F.O.B. Origin. All Purchased Items are to be inspected by Buyer on receipt and claims for shortages, nonconformities or defects must be made in writing to Seller within five (5) days after delivery of the Purchased Items. All returns of Purchased Items shall be made in strict compliance with Seller's then-current Return Policy, a written copy of which is available to Buyer upon request.

6. Time of Delivery. Delivery dates quoted by Seller are estimates only. Seller shall not be liable for any loss or damages as a result of any delay due to any cause beyond Seller's control, including, but not limited to, acts of God or Buyer; fire; theft; accident; strike; riot; embargo; terrorist acts, governmental act, regulation or request; or delays of common carriers. In such cases, Seller reserves the right to reschedule delivery within a reasonable time or terminate the Contract. In no event shall Seller be liable for special, contingent, indirect or consequential damages (including anticipated profits).

7. Intellectual Property Rights. Seller shall retain ownership of all rights, title and interest in and to any intellectual property behind the Purchased Items, including all improvements, updates, upgrades, customizations and modifications thereto. No license of any kind and no right under any patent, trademark, trade secret, trademark, trade name, service mark, copyright or any other proprietary right of Seller and/or its third-party

suppliers/licensors, shall be deemed to have been granted under or by way of this Contract, expressly, by implication, estoppel or otherwise and all rights are reserved to Seller.

8. Limited Warranty. Seller warrants that any Purchased Items provided by Seller shall be substantially as described in applicable written materials provided to Buyer by Seller. Seller's entire and exclusive obligation and liability, and Buyer's sole and exclusive remedy, under the warranty is limited to Seller, at Seller's option, repairing, replacing, or crediting or refunding the purchase price of the defective product. The obligations of Seller under this warranty shall not include any transportation cost, labor costs, installation costs or other costs or charges associated with the repair or replacement. This warranty shall not be enforceable if the Buyer is in default in making any contract payment. The duration of this express warranty (a) for new equipment is twelve (12) months from the date of shipment and (b) for any SELLER replacement part is 90 days after the date of installation, but no more than 6 months after shipment.

a. Third-Party Manufactured Warranty: The Seller hereby assigns to the Buyer those warranties provided by the third party manufacturers of Purchased Items being purchased hereunder. These warranties shall pass through the Seller onto the Buyer and Seller shall have no liability or responsibility for the manufacturer's warranties, and all recourse shall be through the manufacturer.

This warranty shall not apply to damage or defects caused by accident, vandalism, Acts of God, erosion, normal wear and tear, improper selection by Buyer or others, and other causes beyond Seller's control. This warranty shall not apply to the misapplication, improper installation, or misuse of the goods caused by variations in environment, the inappropriate extrapolation of data provided, the failure of Buyer or others to adhere to pertinent specifications or industry practices, or otherwise.

9. Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE WARRANTY IN SECTION 8 IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART, AND SELLER HEREBY DISCLAIMS ALL OTHER SUCH WARRANTIES WITH RESPECT TO THE PURCHASED ITEMS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, DOWNTIME COSTS, LOST BUSINESS, OR REVENUES OR PROFITS ARISING FROM OR RELATED TO THE BREACH OF THIS CONTRACT. SELLER'S MAXIMUM LIABILITY, REGARDLESS OF THE FORM OF ACTION,

RESULTING FROM, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH OF THIS CONTRACT, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR SUCH PRODUCT OR SERVICES. SELLER'S AGENTS HAVE NO AUTHORITY TO GIVE WARRANTIES BEYOND THOSE PROVIDED IN THE LIMITED WARRANTY IN SECTION 8.

10. Specifications, Application, and Use of Products. Products furnished hereunder that are sold pursuant to Seller's specifications are subject to standard manufacturing variations. Buyer shall be responsible for the performance of goods or products produced to Buyer's specifications. Buyer shall be responsible for determining the appropriate use or application of Seller's products for Buyer's requirements, notwithstanding Buyer's solicitation of, or Seller's providing advice or recommendations to Buyer. Buyer waives any claim against Seller, and Seller's agents or employees, arising out of Buyer's selection, application or use of the products furnished hereunder. Buyer shall indemnify and defend Seller from any claim of suit for personal injury (including death), property damage, or other liability arising out of the improper selection, improper application, or any misuse of Seller's products or failure to follow Seller's application, installation, or safety instructions, or proper industry standards.

11. Patent Indemnity. To the extent the items covered by this Contract are manufactured pursuant to designs provided by Buyer, Buyer shall indemnify and save harmless Seller, its agents and subcontractors, from any expense, cost, loss, damage or liability for infringement of any patents with respect to such items and their process of manufacture and Buyer agrees to, at Seller's option and Buyer's own expense, defend or assist in the defense of any action in which such infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder.

12. Export: The Buyer and Seller shall comply will all applicable U.S. export control laws and regulations, including (i) the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 – 130, and (ii) the Export Administration Regulations (EAR), 15 CRF Parts 730 -744. In the absence of available license exemptions and/or exceptions, the Buyer is responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance. No technical data, manufacturing drawings, specifications, software or similar type items shall be transferred, disclosed or exported to "Foreign Persons" without specifically obtaining approvals from the U.S. Department of State's Office of Defense Trade Controls or from the U.S. Department of Commerce's Bureau of Industry and Security, as required.

Buyer shall immediately notify Seller if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are

denied, suspended or revoked. The Seller may be required to obtain information concerning citizenship or export status of Buyers' personnel. Buyer agrees to provide such information as necessary and certifies the information to be true and correct.

13. Buyer's Default. If Buyer fails to make any payment to Seller when due, if Buyer's financial responsibility becomes impaired or unsatisfactory in Seller's sole judgment, or if Buyer commits a material breach of contract, or inhibits or frustrates Seller's performance of this Contract by any act or failure to act, Seller may, without breach of contract and without prior notice or demand, suspend or cancel further performance or deliveries due hereunder. Buyer shall be liable to Seller for any losses or damages of Seller arising from such Buyer defaults and failures, as well as any resulting delays to Seller's performance. Seller may, at its sole option and in its discretion, resume performance of this contract upon Buyer's removal of any inhibiting cause, and upon Buyer's providing sufficient assurance or security for its performance as Seller in its sole judgment may determine to be required.

14. Applicable Law and Conflict. This Contract shall be governed by the laws of the state of California, USA, without reference to its conflicts of laws provisions. The parties consent to such exclusive personal jurisdiction and venue in California, USA. Any dispute arising under this order that is not settled by agreement between the parties may be settled by appropriate legal proceeding in the courts of the State of California. The uniform UN Convention concerning the International Sale of Goods (CISG) shall not apply to this Sales Contract.

In the event of a conflict or dispute between the Parties hereto with regard to the goods and services contemplated under this Contract and any resultant Statement(s) of Work the parties agree that the conflict shall be addressed with the intent of reaching a resolution of the conflict by the respective program managers or their equivalent.

15. Relationship of the Parties. The Buyer and Seller are independent contractors and shall not be deemed partners or joint ventures, or be governed by any legal relationship other than as independent contractors. Neither party shall be responsible for the debts, expenses or other obligations of the other party except as otherwise provided herein.

16. Assignment. Except as otherwise provided in this Contract, this Contract shall not be assignable, in whole or in part, directly or indirectly, by any party hereto without the prior written consent of the other party hereto. Any attempt to assign any rights or obligations arising under this Contract without such consent shall be null and void *ab initio*. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

17. Severability. If any provision of this Contract shall be invalid or unenforceable, such invalidity or unenforceability shall not render the entire Contract invalid. Rather, the Contract shall be construed as if not containing the particular invalid or unenforceable provision, and the rights and obligations of each party **shall be construed and enforced accordingly.**

18. Indemnity. Each party agrees to indemnify the other party, including the other party's officers, agents, directors, and employees, from third party claims, demands, or suits of any kind, including all legal costs and reasonable attorney's fees, resulting from personal injury or damage to the third party's tangible property, to the extent caused by the willful misconduct or the negligent acts of the indemnifying party.

19. Proprietary Information All information including, but not limited to, drawings, prints, publications, specifications, process manufacturing techniques, software products and programs (in object code or any other form), and other intellectual property, provided by the disclosing party to the receiving party prior to and during the performance of this order which is identified as proprietary by the disclosing party shall be received in confidence by the receiving party and shall remain the property of the disclosing party. Such information shall not be reproduced, used, or disclosed to any third party by receiving party without the prior written consent of the disclosing party. Seller shall own all rights and interest in any intellectual property developed as a result of this order.

20. Attorney Fees and Expenses. If Seller is required to file suit or take other legal action to enforce any of its rights hereunder, including without limitation, proceedings to collect amounts due Seller hereunder, Buyer shall pay the reasonable attorney fees and expenses incurred by Seller.

21. Entire Agreement. The Contract, including any referenced exhibits, attachments or other documents, constitute the entire agreement between the parties with respect to the subject matter of the Contract, and supersede any prior or contemporaneous written or oral agreements pertaining thereto.