

**ACCEPTANCE OF ORDERS/TERMS.** All orders for Goods and Services are subject to these Terms and Conditions, and all order may only be accepted in writing by Seller. Any terms and conditions in Buyer's Purchase Order, or other similar instrument, which are in addition to or inconsistent with these Terms and Conditions of Sale, shall not be binding and shall not apply, unless specifically agreed to in writing by Seller. These Terms and Conditions of Sale for Goods or Services shall take precedence over any terms contained in the Purchase Order or any other document.

**DELIVERY.** Seller's delivery dates represent the Seller's best estimate based on current information, and may be subject to change. All deliveries shall be F.O.B. at the Seller's facility.

**PACKAGING.** Seller shall package all goods to assure undamaged delivery in accordance with good commercial practices.

**TERMS OF PAYMENT.** Payment of the price for Goods or Services shall be made by Buyer to Seller within thirty (30) days after Delivery of the Goods, or upon completion of the Services. The unpaid portion of any amount not paid within thirty (30) days shall bear interest at the rate of 1 ½% of the outstanding balance per calendar month. Seller may at any time suspend performance of any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

**PRICES AND TAXES.** The price of the Goods and Services purchased hereunder is exclusive of all taxes, import duties, fees, excises, and/or charges, which are now or may thereafter be imposed (whether by foreign, federal, state, municipal or other public authority), with respect to the sale of the Goods and Services or this order itself. The Buyer shall present the Seller with the appropriate documentation to justify exemption from Arizona, California, Florida, Illinois, and Virginia sales tax. If Seller is required to pay any such taxes, duties or fees, Buyer shall reimburse Seller immediately upon receipt of Seller's invoice thereof.

**CHANGES.** The Buyer may at any time request change(s) to the order within the general scope of work

called for. If such change(s) cause an increase or decrease in the price of the items and/or and extension of the delivery schedule, Buyer shall be notified that Seller can comply, and of any change in the purchase price or delivery schedule. Seller shall not be obligated to proceed with such change(s) until Buyer provides its written agreement to the change in purchase price and/or delivery schedule. Under no circumstances shall Seller be bound to accept any change proposed under this section.

**FORCE MAJEURE.** Neither party shall be liable for any loss or damage hereunder due to unforeseen circumstances or to causes beyond its reasonable control, including without limitation, strikes, lockouts, riots, wars, acts of God, fires, floods, natural disasters, inability to obtain labor, delays caused by suppliers, subcontractors or other parties, material shortages, curtailment of or inability to obtain sufficient electrical or other energy supplies, licensing and/or exporting delays or compliance with governmental laws, regulations or orders. Prompt notice of any such delay beyond either party's control shall be given to the other party. Any such cause shall extend delivery dates to the extent of the delay incurred. It is in particular expressly agreed that any refusal or failure of any governmental authority to grant any export license legally required for the fulfillment by the Seller of its obligations hereunder shall constitute an event of Force Majeure, provided said refusal or failure is not due to the fault or negligence of the Seller.

**TITLE /RISK OF LOSS.** Risk of Loss and Title to the goods shall transfer from Seller to Buyer upon Delivery at F.O.B. Seller's Facility.

**SHIPMENT** Buyer may select the manner of shipment and the carrier by providing Seller with written shipping instructions at the time of placing the order. In the absence of specific instructions, Seller reserves the right to arrange delivery as necessary and Seller will ship by the method it deems most appropriate.

**EXPORT REQUIREMENTS. EXPORT COMPLIANCE.** Performance of this Purchase Order may involve the use of or access to articles, technical data or software that is subject to export controls set forth in the following: 22 USC 2751-2796, the Arms

Export Control Act; 22 Code of Federal Regulations 120-130, International Traffic in Arms Regulations (ITAR); 50 USC 2401-2420, The Export Administration Act; and 15 Code of Federal Regulations 768-799, Export Administration Regulations; along with their supplemental laws and regulations collectively referred to as the "Export Laws and Regulations." Buyer represents and warrants that for all ITAR controlled Goods and Services, that it is a U.S. Person as that term is defined in the Export Laws and Regulations. Buyer shall comply with any and all Export Laws and Regulations and any license(s) issued there under.

Buyer shall not give any Foreign Personnel access to any ITAR controlled technical data, software or Defense Articles, or provide unauthorized Defense Service, utilizing Seller's goods or technical data, as those terms are defined in the applicable Export Laws and Regulations without the prior written consent of Seller. Any request for such information must state the intended recipient's citizenship and status under 8USC 1101 and 8 USC 1324 (the immigration and Naturalization Act), and such other information as Seller may reasonably request. No consent granted by Seller in response to Buyer's request under this Paragraph shall relieve it of its obligations to comply with the provisions of this Paragraph or the Export Laws and Regulations, nor shall any consent constitute a waiver of these requirement or this Paragraph, nor constitute consent for the Buyer to violate any provision of the U.S. Export Laws and Regulations.

Buyer understands that the export, re-export or re-transfer of Seller's Goods or technical data may require a U.S. export license or other approval. Buyer will not transfer the goods or technical data in violation of any U.S. export control law, including by making any exports or re-exports of Seller to the U.S. embargoed countries of North Korea, Cuba, Iran, Sudan, and Syria, or to other restricted destinations or parties that may be added to the restricted export list by the U.S. Government. Export Compliance guidelines and classification information for Seller's products are available by contacting Seller. Buyer acknowledges that the Goods will not be used in or for any nuclear, chemical, biological weapons or applications. In the event of an alleged breach of

export controls, the Buyer shall furnish to Seller all information requested to establish compliance with U.S. Export Regulations.

Buyer shall indemnify and hold harmless Seller from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorney's fees and costs, arising out of any claim for Buyer's failure to comply with the requirements contained under this section or the provisions contained in the Export Laws and Regulations. Where Buyer has failed to perform in accordance with this section concerning Export Laws and Regulations, Buyer will be deemed to be in breach of the Purchase Order and these Terms and Conditions, and Seller may immediately terminate the Purchase Order.

#### **ANTI-CORRUPTION REQUIREMENTS**

The U.S. Foreign Corrupt Practices Act and similar anti-corruption and anti-bribery laws in other countries generally prohibit making, promising, or offering payments or gifts to governmental officials to obtain or retain business or to secure any improper business advantage. Buyer will not offer or make any payments or provide anything of value to a government official to influence an official action that awards business, retains business or secures an improper business advantage in connection with the products. IN the event of an alleged breach of the anti-corruption obligations, the Buyer shall cooperate in good faith with Seller to determine whether an alleged breach has occurred. In such case the Buyer shall furnish to Seller all information requested to establish compliance with the Buyer's anti-corruption obligations.

**CANCELLATIONS.** Orders cannot be canceled or modified by Buyer without the written consent of the Seller. In no event shall any order be modified or canceled for any portion thereof manufactured or in the process of manufacture at the time request for modification or cancellation is received by Seller, except upon terms satisfactory to Seller which shall protect and indemnify Seller against all loss.

**LIMITATION OF LIABILITY.** Seller's aggregate liability on any claim of any kind, or loss or damages arising out of, connected with, or resulting from order(s) or from the performance or breach hereof including but not limited to any default termination or from the manufacture, sale, delivery, repair, use or

resale of any Good(s) and/or Service(s) covered by or furnished under this agreement shall in no case exceed the payment, if any, received by Seller for the product(s), service(s) or part(s) which gives the claim or dispute. In no event shall seller be liable for any services rendered.

**ASSIGNMENT.** Buyer shall not assign this Agreement in whole or in part without the prior written consent of Seller which consent shall not be unreasonably withheld.

**WARRANTY.** Seller warrants the Goods against defects in workmanship and materials for a period of 12 months (unless specified otherwise and included in the Purchase Order) under normal use and service from date of shipment and to no further extent. To be considered for warranty any Good must be returned with a Return Material Authorization (RMA) to Seller's place of origin, transportation charges prepaid, within thirty (30) days after failure. Seller's obligation under this warranty is limited to, at the Seller's discretion, replacing or repairing or giving credit for any of said Goods and which are, after examination, determined by Seller to be defective. The return of Goods under this warranty that are found by the Seller to be free from defect, or to have been damaged by anyone other than the Seller, may be subject to an evaluation charge. Any Goods repaired or replaced under this warranty shall be warranted only for the remainder of the original product's warranty period. This warranty shall not apply to any Goods which shall have been repaired or altered, except by Seller or which shall have not been maintained in accordance with any handling or operating instructions supplied by Seller or which shall have been subjected to extensive physical or electrical stress, misuse, abuse, negligence, improper installation, facility power loss or accidents. The aforementioned provisions do not extend the original warranty period of any Goods, which have either been repaired or replaced by Seller. On all repairs performed on Out-of-Warranty Goods, Seller warrants all labor and materials utilized in the repair/servicing of the Goods to be free from defects for a period of three (3) months.

Where Buyer purchases a Fixed Price Repair Warranty, Seller warrants the Goods will be free from defects in workmanship and materials for a period of

six (6) months, however, the Travelling Wave Tube and Linearizer are excluded from this Fixed Price Repair Warranty coverage.

Where Buyer purchases a replacement Traveling Wave Tube to repair an out-of-warranty unit, the TWT shall be warranted for a period of time identified by the Manufacturer of the TWT. In no event shall Seller be liable for or warrant the TWT for any defects, whether latent or patent, outside the scope of the warranty provided by the manufacturer of the TWT.

Seller shall not under any circumstances be liable to buyer for incidental, special or consequential damages for loss of whatever nature arising out of or in connection with or resulting from the sale by seller or the resale or use by Buyer of any product(s) and/or services delivered hereunder.

This warranty is stated in lieu of all other warranties, express, statutory or implied, or otherwise made including but not limited to the warranty of merchantability and fitness for a particular purpose and of all other obligations or liabilities on Seller's part in connection with the sale of said products, Seller neither assumes nor authorizes any other person to assume for seller any other obligation or liabilities in connection with the sale of the product(s).

#### **REPAIRS NOT COVERED BY WARRANTY**

For all repairs not covered by Seller's warranty, Buyer shall contact Seller to request the issuance of an RMA. Seller will only issue an RMA after receipt from Buyer of a written Purchase Order that contains the authorization for the Test and Evaluation Fee and designating the freight forwarder, specifying either "pre-pay and add" or "freight collect" terms, to ensure the return of the equipment. Seller will then issue written authorization permitting Buyer to return the equipment. Buyer may then return the equipment to Seller for repair at Buyer's expense. Upon receipt of the equipment Seller shall perform testing and evaluation, and, thereafter, Seller will provide Buyer with a written Repair Quote. All Repair Quotes are valid for 60 (sixty) days from the date of issuance. Buyer must then either issue a Purchase Order for the total amount of the repairs or issue a written authorization to Seller to return the unit "as is." The unit will then be returned to Buyer according to the

freight terms listed in Buyer's Test and Evaluation Purchase Order.

Where Buyer has not provided Seller with a Purchase Order authorizing repair, within 180 (one-hundred eighty) days from Seller's issuance of the Repair Quote, or directed that the equipment be returned "as is" at Buyer's expense, Buyer then shall be deemed to have "abandoned the equipment." Thereafter, Seller is hereby authorized to dispose of the "abandoned equipment." Where Seller disposes of "abandoned" equipment, Buyer expressly indemnifies, holds harmless, waives, and releases Seller from any and all claims, losses or damages resulting or relating to Seller's disposition of Buyer's "abandoned equipment."

On all repairs performed on Goods not covered by Warranty, Seller warrants all labor and materials utilized in the repair/servicing of the Goods to be free from defects for a period of three (3) months.

Where Buyer purchases a Fixed Price Repair Warranty, Seller warrants the Goods will be free from defects in workmanship and materials for a period of six (6) months, however, the Travelling Wave Tube and Linearizer are excluded from this Fixed Price Repair Warranty coverage.

Where Buyer purchases a replacement Traveling Wave Tube to repair an out-of-warranty unit, the TWT shall be warranted for a period of time identified by the Manufacturer of the TWT. In no event shall Seller be liable for or warrant the TWT for any defects, whether latent or patent, outside the scope of the warranty provided by the manufacturer of the TWT.

Seller shall not under any circumstances be liable to buyer for incidental, special or consequential damages for loss of whatever nature arising out of or in connection with or resulting from the sale by seller or the resale or use by Buyer of any product(s) and/or services delivered hereunder.

This warranty is stated in lieu of all other warranties, express, statutory or implied, or otherwise made including but not limited to the warranty of merchantability and fitness for a particular purpose and of all other obligations or liabilities on Seller's part in connection with the sale of said products, Seller neither assumes nor authorizes any other person to assume for

seller any other obligation or liabilities in connection with the sale of the product(s).

**BUYER'S LICENSE TO USE** Seller hereby grants to Buyer a non-exclusive, perpetual, irrevocable, world-wide, fully paid up royalty-free license to use the goods in performance of Buyer's contractual obligations to its customer, including the right to copy and modify any technical data and computer software delivered under the Purchase Order and the right to deliver such technical data and computer software to Buyer's customers, if it is a required deliverable under Buyer's contract with its customer.

**SELLER'S INTELLECTUAL PROPERTY RIGHTS.** The Purchase Order does not confer or grant to Buyer, in any manner whatsoever, any patent, trademark, trade secret, mask work, copyright or other intellectual property right held by Seller. All inventions, discoveries, copyrights, proprietary information, technical communications and records originated or prepared by Seller pursuant to Buyer's Purchase Order and/or Buyer's Statement of Work, including but not limited to papers, reports, charts, computer programs, and other documentation of improvements thereto, and including Seller's administrative communications and records shall be the Seller's exclusive property and Seller shall retain all intellectual property rights thereto. Intellectual Property Rights to all hardware, software, or other materials developed or otherwise obtained by Seller for the purpose of fulfilling the terms of Buyer's Purchase Order or Statement of Work, shall remain the exclusive property of the Seller. If Seller creates derivative works of existing products, Seller shall retain the Intellectual property rights to the pre-existing work and shall own the intellectual property rights to any derivative products. Under no circumstances shall any products or research and development provided by Seller to Buyer be considered "works for hire."

The rights of the U.S. Government in technical data, computer software and inventions pertaining to the goods and/or services delivered under the Purchase Order are set forth in the applicable FAR and DFARS clauses, subject to Seller's reservation of rights.

**PATENT IDEMNITY.** Seller shall indemnify and hold Buyer harmless from, and release and not make claim or suit against Buyer because of any suits, claims, losses or other liabilities made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law or claim of unfair trade, or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the goods sold to Buyer by Seller.

**PROTECTION OF PROPRIETARY INFORMATION.** If a separate confidentiality, nondisclosure, or proprietary information agreement exists between Seller and Buyer, which relates to the subject matter of the Purchase Order, then confidential or proprietary information furnished by one party to the other party shall be protected pursuant to such agreement, and this Paragraph shall not apply. For purposes of this Paragraph, "Information" shall mean information disclosed to Buyer by Seller, in connection with this Purchase Order, which is identified by one party as being proprietary, or which is information that a reasonable person would understand to be such information. Examples of "proprietary information" include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, notes, annotations, performance data, designs, drawings, processes, data reports, test reports, and photographs; and engineering, manufacturing, or technical information related to Seller's products, services, equipment or processes as well as duplicates, copies or derivative works thereof. Data and information provided by Seller shall be considered proprietary only when marked "proprietary. Seller's proprietary data and information will be used by Buyer only upon approval of Seller.

Buyer's obligations with respect to Proprietary Information disclosed hereunder prior to the performance in full, termination or cancellation of the Purchase Order shall not, be affected.

**APPLICABLE LAW.** This Order and the performance hereunder shall be construed and enforced in accordance with the laws of the State of California, United States of America. Buyer shall comply with all applicable laws, Executive Order, or

regulations (including export administration regulations). Buyer agrees to indemnify and hold harmless Seller against any loss, cost, liability or damage by reason of Buyer's violation of any applicable laws, Executive Order or regulation.

**DISPUTE RESOLUTION.** Any controversy or claim arising out of related to this order shall be settled by arbitration in the City of San Francisco, State of California in accordance with the commercial rules of the American Arbitration Association by arbitrator appointed in accordance with those rules. The determination by arbitrator shall be final in binding and shall be enforceable in any court of competent jurisdiction.

**WAIVER.** A waiver of any of the terms or conditions hereof shall not be deemed and continuing waiver, but shall apply solely to the instance to which the waiver is directed.

**ENTIRE AGREEMENT.** The terms and conditions as set forth herein, together with any other document incorporated by reference, constitute the entire agreement between Buyer and Seller with respect to any order. No modification hereof, shall be of any force and effect unless in writing and duly signed by authorized representative of each party.