



Directed Energy
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STANDARD TERMS AND CONDITIONS OF SALE

1. **GENERAL:** These Standard Terms and Conditions of Sale Acknowledgement (collectively hereinafter “Terms of Sale”) shall govern all sales by Directed Energy (“Seller”) to Customer. These Terms and of Sale shall be construed as an offer or counteroffer and shall not be construed as an acceptance of Buyer’s purchase order. Seller shall not be bound by Customer's terms and conditions, unless expressly agreed to in writing and Seller's failure to object to provisions contained in any communication from Customer shall not be deemed a waiver to the provisions of these Terms of Sale.
2. **PAYMENT:**
 - (A) Unless otherwise agreed, all invoices are due and payable thirty (30) days from date of invoice. No discounts are authorized. Shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department and Seller may at any time decline to make shipments or deliveries or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to such Credit Department.
 - (B) If in the judgment of Seller, the financial condition of Customer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance, and in the event of the bankruptcy or insolvency of Customer or in event any proceeding is brought against Customer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement from Customer for costs reasonably incurred, which costs shall include, but not necessarily be limited to, cancellation charges.
 - (C) Each invoice for work performed shall be considered a separate and independent transaction and payment thereof shall be made accordingly. If work-in-progress or shipment is delayed by Customer greater than forty-five (45) days, Seller reserves the right to invoice a monthly carrying charge equal to the prime rate plus 2% times the equivalent purchase price of the product so delayed.
3. **TAXES:** Unless otherwise provided herein, the amount of any present or future sales, use, excise or other taxes imposed by any public authority, applicable to the products or the manufacture or sales thereof, shall be added to the purchase price and shall be paid by Customer, or in lieu thereof, Customer shall provide Seller with a tax exemption certificate.
4. **DELIVERY:** All sales are made INCOTERMS 2010 EX WORKS (EXW) Seller's factory. Seller will use its own discretion for selection of shipment mode unless Customer expresses specific instructions.

5. **DELIVERY:** Shipping dates are approximate and are based upon prompt receipt from Customer of all necessary information. If Seller should find that it will be unable to meet the shipping dates, Seller will advise Customer of the time when such delivery will be made. Seller will not be liable for delay of delivery due to causes beyond its control, including but not limited to: Acts of God, acts of civil or military authority, fires, floods, earthquake, strikes, freight embargoes or the inability, due to causes beyond Seller's reasonable control to obtain necessary labor, materials or manufacturing facilities in the event of such delay, the delivery date shall be extended for a period equal to the time lost by reason of the delay or if such delay results in partial or complete failure to perform, Seller may effect cancellation without further liability.

In the event Seller's product is curtailed for any of the above reasons so that Seller cannot deliver the full amount ordered, Seller may allocate production deliveries among its various customers then under contract for similar goods. The allocation will be made in a commercially fair and reasonable manner. When allocation has been made, Customer will be notified of the estimated quota made available.

6. **PATENTS:** Customer shall defend, indemnify and hold Seller harmless against any expense or loss resulting from an actual or alleged infringement of patents, trademarks or unfair competition arising from compliance with Customer's designs, specifications or instructions. The sale of product by Seller does not convey any license, by implication, estoppel or otherwise under patent claims covering combinations of said products with the other devices or elements ("product" as used herein means Seller's manufacturing processes used and/or the cell structure or array configuration, exclusive of metal patterns originated by Customer).

Subject to the limitations set forth below and except as otherwise provided to the preceding paragraph, Seller shall defend any suit or proceeding brought against Customer, so far as that suit is based on a claim that any product, or any part thereof, furnished by Seller constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance (at Seller's expense) for the defense of same. **IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO CUSTOMER UNDER OR AS A RESULT OF COMPLIANCE WITH THE PROVISIONS OF THIS PARAGRAPH EXCEED THE AGGREGATE SUM PAID BY CUSTOMER FOR THE ALLEGEDLY INFRINGING PRODUCT.** The foregoing states the entire liability of Seller for patent infringement by said product or any part thereof. **THIS PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT INFRINGEMENT OF ANY KIND.**

7. **INSPECTION:** Unless otherwise specified and agreed upon, the material to be furnished by Seller shall be subject to Seller's standard inspection at the place of manufacture. If it has been agreed upon that Customer is to inspect the material at the place of manufacture such inspection shall be so conducted as to not interfere unreasonably with Seller's operations and consequent approval or rejection shall be made before shipment of the material.

Notwithstanding the foregoing, if, upon receipt of such material by Customer, the same shall appear not to conform to the contract, the Customer shall notify Seller within thirty (30) days of receipt and afford Seller a reasonable opportunity to inspect the material. No material shall

be returned without Seller's consent. Seller's return material authorization must accompany such returned material.

8. WARRANTIES: LIMITATIONS UPON REMEDIES AND DAMAGE FOR BREACH:

(A) SELLER'S WARRANTIES ARE ONLY AS FOLLOWS, AND ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 8 (B) BELOW:

- (1) Engineering Prototypes - Seller warrants that engineering prototypes will be, upon delivery, in physical conformance and electrical compliance with the provisions of the applicable Statement of Work and specifications mutually agreed upon in writing.
- (2) Production Devices Finished and Fully "Encapsulated" Seller warrants that production devices that are finished and fully encapsulated will be free from defects in material and workmanship under normal use and service. Seller's obligations under this Warranty are, at its option, limited to replacing, repairing or giving credit for, any of said products which shall within one (1) year after shipment, be returned upon issuance by Seller of a Return Material Authorization ("RMA") to Seller's factory of origin, transportation charges prepaid, and which are, after examination, determined to Seller's satisfaction to be thus defective.
- (3) Instrument Products - Seller warrants that instrument products will be free from defects in material and workmanship under normal use and service. Seller's obligations under this Warranty are, at its option, limited to replacing, repairing or giving credit for, any of the instrument products which shall within one (1) year after shipment, be returned upon issuance by Seller of a Return Material Authorization ("RMA") to Seller's factory of origin, transportation charges prepaid, and which are, after examination, determined to Seller's satisfaction to be thus defective.

(B) The Warranties set forth in Section 8 (A) are subject to each of the following limitations:

- (1) The foregoing warranties shall not apply to any product which shall have been repaired or altered, except by Seller, or which shall have been subjected to misuse, negligence or accident.
- (2) Seller does not warrant that the product delivered will operate in combination with other products which may be selected for use by Customer unless such function is stipulated and agreed to in writing by the Seller.
- (3) THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE IN LIEU OF, AND BUYER HEREBY WAIVES ALL OTHER WARRANTIES OF SELLER, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES EXCEPT AS SET FORTH IN THIS SECTION B.
- (4) SELLER SHALL NOT BE LIABLE TO CUSTOMER, TO CUSTOMER'S CUSTOMERS OR TO ANY OTHER PERSON, AND CUSTOMER AGREES

TO INDEMNIFY SELLER WITH RESPECT TO ANY CLAIM FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFIT, AND LOSS OF PLANT, EQUIPMENT OR PRODUCTION ARISING FROM THE SALE OR SUBSEQUENT USE OF PRODUCTS.

- (5) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL LIABILITY OF SELLER ARISING OUT OF THESE TERMS OF SALE OR THE USE OR PERFORMANCE OF THE PRODUCTS EXCEED THE SUM OF THE AMOUNTS PAID BY CUSTOMER FOR THE PRODUCTS.

9. INVENTIONS:

- (A) All discoveries, improvements and inventions, conceived as that term is used before the United States Patent Office in the performance of an order by Seller's personnel shall be the sole and exclusive property of Seller and Seller shall retain any and all to file any patent applications thereon.
- (B) All discoveries, improvements and inventions, conceived as the term is used before the United States Patent Office, in the performance of an order by Customer's personnel shall be the sole and exclusive property of Customer and Customer shall retain any and all rights to file any patent applications thereon.
- (C) In the event personnel of Seller and Customer jointly make an invention relating to the subject matter of an order, then the joint invention shall be jointly owned and neither party shall have any obligation with respect thereto to the other. In the event of a joint invention, the patent expenses shall be divided equally between the parties. If either party elects not to file an application on a joint invention and not to share the expenses thereof the other party may file at its own expense and shall have sole control, ownership and prosecution thereof. Without limiting the generality of the foregoing the parties shall have no obligation to:
- (1) Maintain Secrecy
 - (2) Account for profits attributable to the invention
 - (3) Obtain consent from the other to use or license the invention

10. CONFIDENTIAL INFORMATION: It is anticipated that there will be no exchange of Confidential Information. Any such requirements for exchange of Confidential Information will necessitate the execution of a Non-Disclosure Agreement by the parties.

11. CHANGES IN SPECIFICATION: Documented written changes to the specification may be made by the Customer. However, if design or material requires alteration as a result of these changes, an equitable compensation adjustment, mutually agreed to by both parties, will be made by Customer. Any changes to the specifications and their associated cost, if any, must be authorized in writing by Customer prior to implementation of the changes. It is

understood that any changes to the specification may necessitate extending the completion date of the development effort or delivery of production devices.

12. **TOOLING:** Mask sets and processing information shall be the property of Seller, and nothing herein shall be construed as requiring Seller to assist Customer in any way to obtain an alternate source of supply.
13. **TERMINATION:** Except as provided for in Section 5, cancellation may only be exercised as described below:
 - (A) Engineering Prototypes - Should it be determined that in spite of Seller's best efforts Seller is unable to complete a development product then either party may terminate for convenience upon written notice to the other. In such even the parties shall be absolved and discharged from all liability to the other and Seller shall be entitled to compensation for the progress of the work effort as of the date of termination. Seller shall refund to Customer any monies paid for work not performed and shall deliver to Customer the work effort completed as the termination date.
 - (B) Default - If either party breaches any material provision of an agreement, the other party may cancel provided written notice thereof is given the breaching party not later than thirty (30) days prior to the effective date of termination and such breach is not cured within the aforesaid period. In the event of such termination, if Seller is the breaching party then Customer shall be entitled to recover all monies paid for product not received. If Customer is the breaching party, the Seller shall be entitled to payment for work-in-progress and all conforming product delivered to Customer as of the effective date of termination.
 - (C) Customer may initiate termination for convenience upon thirty (30) days written notice to Seller, in such event Customer shall be liable for all costs incurred by Seller as the effective date of termination, including but not limited to, tooling, material and supplies on order and work-in-progress.
14. **USE OF PRODUCTS IN LIFE SUPPORT AND NUCLEAR APPLICATIONS:**

Products sold by Seller are not designed for use in life support or nuclear applications. Seller's customers using or selling products for use in life support or nuclear applications do so at their own risk and agree that Seller is not liable in whole or in part for any claim or damage arising from such use and agree to full indemnify Seller from and against any and all damages, loss, cost, expense, or liability arising out of or in connection with the use or performance of products in life support or nuclear applications.
15. **GOVERNMENT CONTRACT PROVISIONS:** If Customer's purchase order indicates by contract number that it is placed under a government contract, the parties will by mutual agreement determine which, if any, Federal Regulation might be applicable to Customer's order.
16. **ASSIGNMENT:** Neither party may assign any order, warranty or any interest or right thereto without the prior written consent of the other, except to a successor to its business by reason of merger, sale of assets or other form of acquisition.

17. **EXPORT CONTROL:** Customer shall comply with all export/import laws of the United States and the applicable laws of any other country, including the Philippines. Export directly or indirectly of these Products, or goods containing these Products to any other country may be prohibited unless Customer obtains prior export or reexport authorization from the United States Government or other applicable government. Customer shall hold Seller harmless and indemnify it for any and all fines, penalties or other liability, (including attorney's fees) that result from Customer's failure to comply with any such applicable laws.
18. **MODIFICATIONS:** No changes in or modification to these Terms of Sale may be made without the written approval of Seller's Corporate Office.
19. **NOTICE:** Any notice, request, demand or other communication required shall be deemed to be properly given (i) personally delivered; (ii) ten (10) days after the postmark if mailed or (iii) 24 hours after being telefaxed to the address so specified by the Customer and Seller.
20. **GOVERNING LAW:** Customer and Seller agree that these Terms of Sale is made and entered into in, and shall be governed by the laws of, the State of California. Customer and Seller consent to jurisdiction of any state or federal court in Santa Clara County, California to resolve any claim or controversy arising from or in any manner related to the transaction documented in this Agreement. The U.N. Convention on Contracts for the International Sales of Goods does not apply to these Terms of Sale.
21. **SEVERABILITY:** These provisions are severable, and if any provision is held to be invalid or otherwise unenforceable, in whole or in part, the remainder of the provisions, or enforceable parts thereof, shall not be affected.
22. **WAIVER:** The failure of any party to enforce any provision shall not be construed as a waiver of such provision, nor prevent such party thereafter from enforcing such provision or any other provision.
23. **ENTIRE AGREEMENT:** These provisions (including all exhibits and documents agreed upon as defining the performance of work) supersede all prior agreements between the parties whether written or oral, and contain the entire agreement. No modification of any provision shall be effective unless agreed in writing by Seller.