

TERMS AND CONDITIONS OF SALE DS-0014

1 Agreement.

- 1.1 Agreement. These Terms and Conditions (“Terms”) have been incorporated by reference into a sales quotation, sales confirmation, sales order, contract, agreement, or other written instrument issued or signed by an authorized employee of Seller (each, a “Seller Sale Document”) regarding the sale of products (“Products”). These Terms and the Seller Sale Document issued by Seller to Buyer shall be collectively referred to herein as this “Agreement.” A sales quotation will expire on the earlier of 45 days from the quotation date or the other expiration date set forth therein. The quotation represents no obligation until Seller accepts a written purchase order and acknowledges acceptance.
- 1.2 Entire Agreement. This Agreement, including any attachments, exhibits or other written documents that are explicitly incorporated by reference by the text of this Agreement, constitutes the entire agreement between Seller and Buyer regarding the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, or understandings, written or oral, explicit or implied, concerning the subject matter of this Agreement. This Agreement may not be modified except in a writing signed by a duly authorized employee of Seller and Buyer.
- 1.3 Buyer Documents. Seller shall not be bound by the terms and conditions of any purchase order, order confirmation, acceptance or other instrument issued by Buyer (collectively, “Buyer Document”). Seller’s performance under this Agreement shall not, under any circumstances, be deemed Seller’s acceptance of any of the terms and conditions contained in a Buyer Document. If Buyer issues a Buyer Document to procure the Products described in a Seller Sale Document, then such issuance shall be deemed to constitute Buyer’s acceptance of the terms and conditions of this Agreement, but all other terms and conditions contained in the Buyer Document shall be of no force or effect and shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of this Agreement. Taking possession of the Products by Buyer or payment by Buyer for any of the Products shall also be deemed to constitute Buyer’s acceptance of and assent to all of the terms and conditions of this Agreement. The sale of the Products is expressly made conditional on Buyer’s acceptance of the Terms set forth herein.
- 1.4 Precedence. In the event of any conflict between the terms of a Seller Sale Document and these Terms, the terms and conditions of the Seller Sale Document shall take precedence.

2 Products. Upon the earlier to occur of Seller’s execution of a confirming copy of Buyer’s purchase order, the issuance by Seller of a sales order that Buyer accepts by executing a confirming copy or that Buyer does not immediately reject, or shipment of the Products by Seller, Buyer agrees to purchase the Products from Seller and Seller agrees to sell the Products to Buyer, in accordance with the terms and conditions of this Agreement.

3 Purchase Price.

- 3.1 Prices for Products. The prices for Products covered by these Terms are those prices set forth in the applicable Seller Sale Document or, if there are no prices contained therein, then the prices shall be as set forth on Seller’s then-current applicable standard price list applicable to Buyer under Seller’s sales policies. The prices for the Products do not include taxes, duties and other applicable charges which will be separately added to Seller’s invoice and paid by Buyer in accordance with Section 4.3.

4 Terms of Payment

- 4.1 Payments. All payments are due and payable in full by Buyer immediately upon Buyer’s receipt of the invoice, but no later than the time period set forth in the applicable Seller Sale Document. If no time period is stated in the Seller Sale Documents, then the time period shall be no later than 30 days from the date of shipment. Buyer shall deliver payments to the address or bank account specified in Seller’s invoice.
- 4.2 Currency. Buyer shall pay all amounts due in U.S. dollars, unless otherwise provided in the applicable Seller Sale Document.
- 4.3 Taxes. Buyer shall promptly pay the amount of any sales, use, VAT, duties, excise or other similar tax (and all interest and penalties) applicable to the sale, importation, transportation or use of the Products (other than amounts due on Seller’s net income from such sale or use).
- 4.4 Late Payment. All amounts past due shall incur a late payment charge that shall accrue at a rate of 1.5% per month or the highest rate permitted by applicable law, whichever is less, calculated from the date due until such amount is paid.
- 4.5 Buyer’s Credit. Seller’s performance under this Agreement shall at all times be subject to Seller’s approval of Buyer’s creditworthiness. Seller shall be permitted to terminate this Agreement, in whole or in part, or to suspend deliveries (required by the terms of this Agreement or under any other agreement between Seller and Buyer) and warranty service and shall be permitted to impose such other terms and conditions or security arrangements as Seller, in its sole discretion, deems appropriate to ensure full payment by Buyer for the Products.

- 4.6 **Security Interest.** Buyer hereby grants to Seller a purchase money security interest in all Products, and in any proceeds thereof, including insurance proceeds, to secure payment of all amounts due under this Agreement until such amounts are paid in full. Buyer shall not, without Seller's prior written consent, relocate, sell, lease, or create additional liens other than the security interest described herein over the Products until Buyer has paid for all such Products in full. If Buyer defaults under any obligation arising under or in connection with this Agreement, Seller may pursue all remedies of a secured creditor provided under the Uniform Commercial Code or other applicable law. Buyer agrees that Seller is entitled to file such financing statements and amendments thereto as Seller deems necessary to protect its interest in the Products and to effectuate the purposes of this Section 4. If Buyer defaults on any obligation arising under or related to this Agreement, Buyer shall make all Products available so that Seller may repossess them promptly and without a breach of the peace. Upon Seller's request, Buyer covenants that it shall execute any and all documents requested by Seller to perfect Seller's security interest in any or all of the Products.
- 4.7 **Notice of Payment Dispute.** If Buyer intends to dispute any amount due under or related to this Agreement, Buyer must notify Seller in writing within 30 days of the date such payment is originally due and pay Seller any amounts that are undisputed. Buyer waives its right to dispute amounts or to bring or participate in any legal action involving a dispute of such amounts if such amounts not reported within such 30 day period.
- 5 **Delivery and Acceptance.**
- 5.1 **Title and Risk of Loss.** Unless otherwise provided in the applicable Seller Sale Document, all Products shall be delivered Free Carrier (FCA) Seller's manufacturing location (Incoterms 2010). Title and risk of loss or damage to Products therefore pass to Buyer at such location.
- 5.2 **Dates.** Seller's delivery and performance dates are estimates only. Seller will use commercially reasonable efforts to deliver in accordance with the delivery or performance dates specified in the Seller Sale Document, but may change those dates as it deems necessary. Seller shall not be liable for failure to deliver or perform by such dates.
- 5.3 **Shipping.** All Products shall be shipped to the "Ship To" address designated in the Seller Sale Document. Seller shall provide at its expense commercial packaging adequate under normal conditions to identify and protect the Products during shipments by regular commercial carrier. Buyer may request special packaging at its expense. Unless Buyer requests specific carriers or methods of shipment, Seller shall ship to Buyer by regular commercial carrier selected by Seller. Buyer shall pay all freight and unloading costs. Unless Buyer requests specific insurance coverage or specific valuation amounts, Seller shall specify shipment without insurance coverage and at minimum valuation. Buyer shall pay all insurance costs. Buyer assumes all risk of loss and damage after products are made available FCA (Incoterms 2010) Seller's manufacturing location including during shipment, and Buyer shall file any damage claim forms required by the carrier or insurer.
- 5.4 **No Cancellations.** Buyer may not cancel, delay, reschedule or otherwise vary any delivery of Products without Seller's written consent, and Buyer shall be responsible for payment of any rescheduling charges imposed by Seller.
- 5.5 **Acceptance.** All Products shall be deemed accepted by Buyer upon delivery.
- 6 **Testing.** If testing is expressly included in a Seller Sale Document, Seller shall perform such testing in accordance with Seller's standard testing procedures for the type of Products in effect on the date of testing.
- 7 **Excusable Delay.** Seller shall not be responsible for any delay or non- performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance, defective performance or late performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of God, war, acts of any government in either its sovereign or contractual capacity, fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, severe weather, delays in transportation, airline schedule, fuel shortages, or delays of suppliers or subcontractors.
- 8 **Confidentiality.**
- 8.1 **Confidential Information.** By virtue of this Agreement, the parties may have access to information that is confidential to the other ("Confidential Information"). Confidential Information will be limited the terms and pricing under this Agreement and all information clearly identified in writing as confidential. A party's Confidential Information shall not be deemed to include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the disclosing party's Confidential Information.

- 8.2 Restrictions on Disclosure and Use. Each party agrees to hold the other party's Confidential Information in strict confidence. Each party agrees, unless required by law, not to make the other party's Confidential Information available in any form to any third party for any purpose except to the extent necessary to exercise its rights under this Agreement, and to treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. Each party agrees not to use the other party's Confidential Information for any purpose other than the performance of this Agreement. Each party agrees to limit the disclosure of Confidential Information to those of its employees and agents who have a need to know such Confidential Information, and each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement. It will not be a breach of this Section if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided the party served with such process promptly notifies the other party and provides reasonable assistance if requested so that the other party may seek a protective order against public disclosure.
- 8.3 Other Confidentiality Agreements. If Seller and Buyer have entered into a separate agreement designed to protect the Confidential Information of either party transmitted in connection with the transactions described in a Seller Sale Document, then the terms of this Section 8 shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of such separate agreement, which agreement shall remain in full force and effect.

9 **Warranty.**

- 9.1 Warranty Terms. Seller warrants to Buyer (and to no other party) for a period of 90 days from original shipment that the Products shall conform substantially to the applicable specifications for the Products and shall be free from defects in material and workmanship. Defects in a repaired or replaced Product shall be covered to the extent of the unexpired term of the applicable warranty period.
- 9.2 Limitations. The warranty set forth above shall not apply if (i) Seller is unable to reproduce the defect or error reported by Buyer; (ii) Buyer has failed to use the Product in accordance with Seller's manuals, instructions and/or other procedures that Seller has made available to Buyer or that it makes available to purchasers of the Product generally; (iii) Buyer has failed to timely report a defect or error in accordance with the procedures established by Seller to identify and report such problems to Seller's Customer Service Department; (iv) the Product has been modified without Seller's prior written consent; (v) the Product has been damaged by neglect, misuse, mishandling, failure of electrical power, user error, liquids, or as a result of any other cause external to Product; (vi) Buyer has failed to timely pay, in whole or in part, any invoice issued by Seller; or (vii) Buyer is in breach of this Agreement or any other agreement between Buyer and Seller (this statement shall not be construed to limit any other rights or remedies available to Seller for any such breach). The warranty set forth above is not transferrable and may not be relied upon by or enforced by anyone other than Buyer.
- 9.3 Exclusive Remedies. Buyer must report to Seller in writing any breach of the warranties contained in this Section 9 during the relevant warranty period. Products may be returned to Seller freight prepaid only after obtaining a Return Material Report Number from Seller. If after testing and inspection any such returned product is determined by Seller to be defective, Seller shall promptly repair or replace the Product and return it to Buyer freight prepaid. Buyer's sole and exclusive remedies, and Seller's entire liability, shall be limited to repair or replacement of defective Products as set forth herein. The foregoing notwithstanding, Seller may at Seller's election and in Seller's sole discretion, provide Buyer with a refund in lieu of repair or replacement of defective Products as set forth herein.
- 9.4 Disclaimer. EXCEPT AS SET FORTH IN THIS SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE. SELLER DOES NOT ASSUME OR AUTHORIZE ANY OTHER TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE PRODUCTS, INCLUDING LIABILITY ARISING OUT OF PRODUCT TESTING, DELIVERY, SERVICE OR USE. SELLER DOES NOT EXTEND THE WARRANTY CONTAINED IN THIS SECTION 9, AND BUYER MAY NOT TRANSFER IT, TO ANY PARTY OTHER THAN BUYER.

- 10 Limitation of Liability. SELLER'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL PRICE ACTUALLY PAID BY BUYER FOR THE PRODUCTS COVERED BY THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 AND IN THE OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. SELLER'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

- 11 No Indirect or Consequential Damages. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY BUYER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE

- 12 Miscellaneous Provisions.

- 12.1 Remedies. The remedies described in various sections of this Agreement shall not be deemed the exclusive remedies available to Seller and Seller shall, in addition to all such remedies, also be entitled to all other remedies available to it under law, in equity and as specified elsewhere in this Agreement.
- 12.2 Proprietary Rights. Seller retains all rights, title and interest in and to the Intellectual Property Rights in the Products and any derivative works thereof. Buyer does not acquire any other rights, express or implied, in the Products. Buyer will acquire no rights in Seller's Confidential Information which may be included in any derivative work unless expressly agreed otherwise. "Intellectual Property Rights" means patent, copyright, trademark, trade secret and any other intellectual property rights.
- 12.3 Indemnity by Buyer. Buyer shall indemnify and hold harmless Seller from any claims arising from or related to any subsequent resale of the Products by Buyer or any sale by Buyer of Buyer's products that contain or incorporate the Products or any acts or omissions of Buyer, its officers, directors, employees, agents or permitted assigns. Without limiting the generality of the foregoing, Buyer shall indemnify and hold harmless Seller from any claims for intellectual property infringement related to any Products that are manufactured to Buyer's design.
- 12.4 Relationship Between the Parties. Each of Seller and Buyer is an independent contractor and neither party's personnel are employees or agents of the other party. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties shall at all times be and remain independent contractors. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.
- 12.5 Marketing Rights. Seller shall have an unfettered right to issue a press release regarding the sale of Products covered by this Agreement, including disclosing the purchase price, the Products covered, Buyer's name and location, and any other information deemed appropriate in Seller's discretion. Such disclosure, if made by Seller, shall not be deemed a breach of Section 8.
- 12.6 No Buyer Press Release. Buyer shall issue no press release or other public statement of any kind regarding the Products or terms of this Agreement without Seller's express written consent.
- 12.7 Notice. Any notice, request, demand or other communication required or permitted hereunder will be in writing and will be deemed to be properly given upon the earlier of (i) actual receipt by the addressee, (ii) five business days after deposit in the mail, postage prepaid, when mailed by registered or certified airmail, return receipt requested or (iii) two business days after being sent via internationally-recognized private industry courier (e.g., FedEx, UPS) to the respective parties at the addresses indicated in the Seller Sale Document, (ATTN: President) or to such other person or address as the parties may from time to time designate in a writing delivered pursuant to this Section.
- 12.8 No Assignment. Buyer may not assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, by operation of law or otherwise, this Agreement or any rights or obligations under this Agreement without the prior written consent of Seller. Any purported assignment, transfer, delegation or other disposition by Buyer will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 12.9 No Third Party Beneficiaries. It is not the intention of the parties to confer a third party beneficiary right of action upon any third party or entity whatsoever, and nothing in this Agreement will be construed to confer upon any third party other than the parties hereto a right of action under this Agreement or in any manner whatsoever.
- 12.10 Severability and Waiver. In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force and remain in effect according to its stated terms and conditions. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 12.11 Permits and Licenses. Buyer shall be required to obtain and maintain all registrations, licenses, permits and/or approvals from relevant authorities, as may be necessary to store and operate the Products purchased by Buyer.
- 12.12 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of California, U.S.A., without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 12.13 Venue. Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be Los Angeles County, California. If Buyer is headquartered in the United States, the arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. If Buyer is headquartered outside of the United States, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction.
- 12.14 Costs of Collection and Other Legal Fees. Buyer shall reimburse Seller, upon demand, for all expenses incurred by Seller in collecting any amounts past due under this Agreement, including, without limitation, attorneys' fees.

- 12.15 Export Administration. Buyer acknowledges that export and re-export of the Products is subject to compliance with export control laws, including, but not limited to, the Export Administration Act, the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR) and other export controls of the United States of America as amended from time to time, the Export Control Act 2002, the Export Control Order 2008, EU Regulation 428/2009 and the Customs and Excise Management Act 1979 and other export controls of the United Kingdom as amended from time to time, and the Strategic Trade Act 2010 and other export controls of Malaysia as amended from time to time (collectively, the "Export Laws"). Buyer covenants that it shall complete, sign and deliver all documents necessary to facilitate the issuance of any export licenses required for any delivery, export and re-export of the Products and related technical data and documentation. In addition, Buyer covenants that it shall comply with all export-related instructions provided to it by Seller regarding the receipt, handling, use and storage of Products. Buyer shall not export or re-export any products, software, technical data, or documentation associated with the Products (including, but not limited to, processes, services, data, and reports derived from the use of the Products) to any country or person to which export or re-export of such items is prohibited by any of the Export Laws without first obtaining the written permission of Seller and from the U.S., U.K., and/or Malaysian government (as applicable). Seller shall have the right to delay shipments or terminate this Agreement, in whole or in part, and without liability, should Seller not obtain in a timely way all required export licenses and approvals necessary to export the Products. Shipment and delivery timing is also conditioned upon Buyer obtaining, and providing requested evidence to Seller of, all licenses, permits and other governmental authorizations required to receive, handle, use and store the Products (including all radiation producing parts, components or sources) that are required by the countries or local territories through which the Products (including all radiation producing parts, components or sources) may transit, be stored, operated or otherwise used. Buyer represents and warrants that its export privileges are not, and have not within the last five years been, denied, suspended, or revoked in whole or in part by any government, including any agency or department of the U.S., U.K., or Malaysian government. Buyer further represents and warrants that its name (including any former name) and the name of any current or former director, officer or employee of Buyer, do not appear, and have not within the last five years appeared, on any lists maintained by the U.S., U.K., or Malaysian government identifying parties who are subject to export denial orders or who are otherwise restricted or prohibited by such governments from engaging in export transactions.
- 12.16 Suspended or Debarred Parties. Buyer represents, warrants and covenants that it, including its consultants and agents and its and their officers, directors and employees, are not presently, and have not within the past five years, been debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible by any agency or department of the United States Government for award of contracts or subcontracts. Buyer covenants that it shall provide Seller immediate written notice if Buyer, including any of its consultants or agents or any of its or their officers, directors or employees, hereafter become debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible for award of contracts or subcontracts by any agency or department of the United States Government.
- 12.17 Construction. The Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

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End of Terms and Conditions