

Protochips, Inc.'s

STANDARD TERMS AND CONDITIONS OF SALE



NOTICE:

All quotes, products and services provided by Protochips Inc. ("Seller") to any customer, distributor, original equipment manufacturer, end-user or other purchaser ("Buyer") are furnished only on the terms and conditions stated herein. By ordering and accepting delivery of products and/or services from Seller, Buyer agrees to and accepts these terms and conditions, including the Software End User License Agreement, and agrees that, unless modified by separate negotiated agreement as provided below, these terms and conditions, together with the item, quantity, price, and terms set out in Seller's quote, order acknowledgement and/or invoice, constitute the entire agreement of the parties ("Contract"), superseding all other communications and documentation. Seller hereby expressly rejects any different or additional terms, preprinted or otherwise, contained or referenced in any purchase order or other documentation furnished by Buyer, whether before or after delivery of the products or services, even if receipt thereof is acknowledged by signature or otherwise. **NO MODIFICATION OF THESE TERMS SHALL BE EFFECTIVE UNLESS SET OUT IN A SEPARATE NEGOTIATED AGREEMENT SIGNED BY AN AUTHORIZED OFFICER OF SELLER.**

1. DEFINITIONS

"**Buyer**" means the entity to which Seller is providing Products or Services under the Contract.

"**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, Seller's final quote, the agreed scope(s) of work, ship date, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"**Contract Price**" means the agreed price stated in the Contract for the sale of Products or Services, including adjustments (if any) in accordance with the Contract.

"**Insolvent/Bankrupt**" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"**Products**" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"**Seller**" refers to Protochips, Inc. or any authorized affiliate ("Protochips").

"**Services**" means the services Seller has agreed to perform for Buyer under the Contract.

"**Site**" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"**Terms and Conditions**" means these "Protochips Inc.'s Standard Terms and Conditions of Sale", including any relevant addenda, together with any modifications or additional provisions specifically stated in Seller's final quote or specifically agreed upon by Seller in writing.

2. ORDER DETAILS

2.1 In response to Buyer's interest in a particular Product(s), Seller shall provide Buyer with a quote for such Product(s). The quote may contain detailed terms applying to each potential purchase of such Product(s). Quotes are valid from issuance for a number of days specified therein unless not specified, and in such case for ninety (90) days. Quoted prices are valid for 90 days and may be changed or withdrawn by Seller at any time prior to order acceptance. Buyer accepts these Terms and Conditions as part of the Contract upon issuing a purchase order that becomes an Accepted Order.

2.2 Buyer submits a written purchase order referencing the relevant quote, the delivery location(s) (if applicable), the requested shipment date (if applicable and within any quoted parameters), and any other information requested by Seller to fulfill the purchase order.

2.3 Seller will ordinarily accept Buyer's purchase order (a) in writing via email, (b) by shipping the Products or making a software Product available to Buyer, or (c) by performing the Services requested in the Order, any of which is an "Order Acceptance" and creates an "Accepted Order." Prior to an Order Acceptance, Seller shall have no obligation to provide a Product. A purchase order will not be deemed an Accepted Order until any and all fees or deposit payments required to be made by Buyer in advance, as described in Sections 4.1 or 4.2, are paid.

2.4. Seller will be entitled to assume that persons placing purchase orders on behalf of Buyer (electronically or otherwise) are authorized to do so and to accept the Terms and Conditions herein.

3. CONTRACT PRICE

Unless otherwise specified in Seller's quote or order acknowledgement, all prices are in US Dollars and subject to change without notice. Quoted prices are valid for 90 days and may be changed or withdrawn by Seller at any time prior to order acceptance. **QUOTED PRICES ARE VALID ONLY FOR THE QUANTITIES, TERMS, SHIP DATE, AND PAYMENT SCHEDULE SPECIFIED, AND ARE SUBJECT TO ACCEPTANCE OF ALL CONTRACT TERMS; ANY MODIFICATION OF THESE TERMS MAY RESULT IN INCREASED PRICING.** Clerical or typographical errors are subject to correction. Prices do not include, and Buyer is responsible for payment of, any applicable sales, use, value added, excise, property, customs, documentary, import/export, or other taxes, tariffs, fees, duties, or charges, domestic or foreign, related to the products and/or services supplied (other than taxes on Seller's net income). Any such amounts paid by Seller will be added to Buyer's invoice and paid by Buyer unless Buyer provides an exemption certificate acceptable to the relevant government authority.

4. PAYMENT

4.1 Unless otherwise specified in Seller's written quote or purchase order acknowledgement, payment terms are net 30 days from date of invoice, subject to approved credit at the time of Order Acceptance.

4.2 All other purchase orders are subject to payment terms of cash in advance or letter of credit. Purchase orders exceeding \$100,000 (USD) require a 25% advance, non-refundable deposit. No discount for early payment or other deviation from these payment terms is authorized unless approved in writing by Seller's Finance Department. Payment terms will not be affected by any delay in delivery, installation or acceptance, and Buyer will be liable for payment of the invoice price of all shipped items substantially conforming to this Contract, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same. Payment is required for all shipped products in accordance with invoice terms independent of any required installation, which will be separately invoiced by Seller following completion of the installation. If shipment or installation is delayed due to Buyer's acts or omissions, payment will be due on the scheduled shipment or installation date as shown on Seller's order acknowledgment, and the items ordered will be stored by Seller at Buyer's expense and risk for the duration of such delay. Seller reserves the right to modify payment terms at any time or to require cash payment before delivery of any unfilled portion of this Contract or other assurance of due performance when, in the opinion of Seller, Buyer's financial condition or previous payment record so warrants. Upon making any such demand or if at any time Buyer becomes delinquent in any payment due, Seller in its discretion may take any and all actions permitted by law to protect its interests including set off against any sums otherwise due from Seller to Buyer, and may suspend production and institute credit hold procedures on all open purchase orders. Future purchase orders will not be confirmed until Buyer's account is brought current, including all required payments and interest charges. If Buyer fails to comply with any demand pursuant to this section within the period specified (but in no event longer than thirty (30) days), Seller may (i) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of that portion of the Contract not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable, or (ii) make shipments under reservation of a security interest and demand payment against tender of documents of title.

4.3 For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less, calculated

daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available to Seller under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder.

4.4 Buyer shall pay Seller for Extended Service plans prior to the start of the service plan by paying all invoiced amounts in U.S. Dollars, within thirty (30) days from the invoice date. The Effective Date of plan shall not be prior to the Seller's acknowledged receipt of payment.

4.5 Buyer shall reimburse Seller for reasonable out-of-pocket, living, and other ancillary expenses Seller incurs in connection with the Services provided hereunder and/or the delivery of the Product (including Transportation Costs) and any other reimbursable items set forth in each quote.

4.6 Buyer will notify Seller of any invoice disputes within thirty (30) calendar days after the invoice date, Buyer will notify Seller in writing if it disputes in good faith any portion of the invoice and will provide supporting information. Seller will review the issue promptly and will determine if an adjustment is appropriate. Buyer shall pay within ten (10) calendar days of such determination by Seller. Notwithstanding disputed amounts, Buyer shall pay, when originally due, any undisputed portion of each invoice. Buyer shall be liable for all costs and expenses, including legal fees, that Seller incurs in connection with the collection of valid amounts due but not timely paid. If any amount becomes more than sixty (60) calendar days past due, Seller may discontinue all Services and future shipments to Buyer, without liability for damages until such time as payment is made in full. Upon receipt of such past due amounts, the Parties will work together in good faith to reset any delivery and performance schedules, which automatically shall extend at least to the extent of any discontinuation due to non-payment.

5. CHANGES & CANCELLATION

Any changes, including scope or customer requested ship date, requested by Buyer must be submitted in writing and are subject to written acceptance by an authorized representative of Seller. Costs and/or delays resulting from such changes will be solely determined by Seller and binding upon Buyer. Except by special written agreement, accepted purchase orders may be terminated or canceled by Buyer only with Seller's prior written consent, which shall be subject to forfeiture of any deposit or down payment and payment by Buyer of a termination penalty as follows: for cancellation requests received by Seller (i) sixty (60) or more days prior to customer requested ship date, a penalty of 30% of the remaining balance; (ii) thirty to sixty (30 to 60) days prior to customer requested ship date, a penalty of 50% of the remaining balance; and (iii) less than thirty (30) days prior to customer requested ship date, a penalty of 100% of the remaining balance. Cancellation fee of 100% on all custom Products or Services.

6. RETURN AUTHORIZATION

All returns of Products, parts, or other items to Seller (including returns for examination or repair under warranty) require prior authorization from Seller, in the form of a returned material authorization ("RMA"). For items not covered by warranty, issuance of an RMA requires a Buyer purchase order covering all charges associated with the repair. All returned items should be shipped by Buyer freight prepaid, unless otherwise directed by Seller, and properly boxed to prevent damage in transit. For returned products covered by warranty, return transportation will be prepaid by Seller. For returned products not under warranty or returned with no fault found, return transportation will be charged to Buyer.

7. INSTALLATION & FIELD SERVICES

Product prices are exclusive of any required installation or other services. Such services, if required by Seller, will be provided at Buyer's expense. Seller will coordinate with Buyer regarding the schedule and requirements for any installation or other services. Buyer is responsible for providing a safe and suitable site with all required equipment and service ready to receive the products on the estimated delivery date. Seller shall have no liability for any damage, claim, or liability which, in Seller's opinion, results from inadequate or faulty installation or service of products by anyone other than Seller's authorized service technician. If products are not installed by Seller or Seller's authorized service technician, Buyer shall be responsible for all installation obligations. Buyer will reimburse Seller at its standard rates for any extra time, travel, or expense resulting from absence or inadequacy of rescheduling arrangements or other delay or prolongation of installation caused by Buyer or its representatives. Buyer is responsible for taking all precautions reasonably necessary to prevent

injury to Seller's employees, agents or contractors at Buyer's premises. No services will be performed if Seller reasonably believes that conditions at Buyer's site represent a safety or health hazard to any Seller personnel.

8. PROPRIETARY INFORMATION

8.1 Buyer acknowledges that Seller's Products and Services are based upon and embody various confidential and/or proprietary technology, processes, methods, information, know-how, and trade secrets of Seller, and that Seller (or its suppliers or licensors, where applicable) shall exclusively own all inventions, technology, techniques, know-how, engineering, and other proprietary information of any kind used or embodied in the products, drawings, designs, specifications, prototypes, documentation, software, services, and other items furnished by Seller to Buyer, all related materials and information, written or oral, all patents, patent applications, copyrights, trademarks, trade names, trade secrets, and other intellectual property rights with respect thereto, and all reproductions or derivatives thereof in any form ("Proprietary Information").

8.2 Buyer may not (i) copy, adapt, develop, reverse engineer, recast, compile, decompile, translate, disassemble, or create derivative works from any Products, documentation, or other Proprietary Information provided by Seller, or permit any representative, end-user, or other third party to do so, (ii) remove, alter, or obscure any copyright, trademark, logo, government restricted rights, or other proprietary or confidentiality notices or legends from any items provided by Seller, or (iii) disclose or use Proprietary Information for commercial purposes or in a manner detrimental to Seller. Disclosures of Proprietary Information may be made only to Buyer's representatives having a specific need to know and a written obligation to protect such information on terms no less restrictive than those herein. Buyer will be responsible for any breach by its representatives. It is agreed that any breach of this section may cause Seller irreparable harm for which recovery of damages would be inadequate, and that immediate injunctive or other equitable relief are appropriate and available to Seller to prevent any violation, threatened or actual, of this article, even if monetary damages are available and readily quantifiable, and without proof of actual damage.

9. SECURITY INTEREST

Seller retains, and Buyer hereby grants to Seller, a continuing purchase money security interest in the Products until Buyer pays for them in full and Buyer shall provide any assistance needed to perfect such interest. Buyer appoints Seller as Buyer's agent to sign and file a financing statement and any continuation statements and amendments thereto to perfect Seller's security interest and authorizes Seller to file such financing or continuation statements and amendments thereto without Buyer's signature where permitted by law. Seller retains all rights, powers, and remedies available to a secured party under the United States Uniform Commercial Code (unless Buyer is located outside the U.S.) or other applicable laws. Some or all of this Contract may be filed as a financing statement as evidence of a security interest granted herein and to perfect the security interest in the Products.

10. DELIVERIES; TITLE TRANSFER; RISK OF LOSS; INSPECTION

10.1 Products shall be delivered within a reasonable time after the receipt of Buyer's Order and the payment of any fees required to be paid up front by Buyer. Seller shall not be liable for any delays, loss or damage in transit.

10.2 Unless otherwise agreed in writing by the parties, Seller shall deliver Products FCA Seller's facilities using Seller's standard methods for packaging and shipping such Products. Notwithstanding the foregoing, unless otherwise agreed by the Parties, Seller shall pre-pay transportation costs and invoice the Buyer for such charges, and Seller will select the method of transportation.

10.3 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors or agents, including as a result of Buyer's failure to provide, in a timely manner, appropriate instructions, documents, licenses or other authorizations, Seller may ship or place the Products in a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery of the Products shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

10.4 Title to Products (excluding Licensed Materials) and the risk of loss or

damage shall pass to Buyer upon Seller's presentation of the Products to the carrier for shipment. Licensed Materials are licensed (not sold) and no title or right of ownership to Licensed Materials is transferred to Buyer.

10.5 If Product requires installation, Buyer shall wait for Seller's implementation team to open such boxes or packaging before inspecting the Products. Buyer shall be deemed to have accepted the Products unless it notifies Seller in writing within fourteen (14) days from the date Seller's implementation team opens the boxes and or packing containing the Products of any Nonconforming Products and furnishes such written evidence or other documentation as required by Seller. If Product does not require installation, Buyer shall be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products and furnishes written notice within fourteen (14) days from the date of delivery. "Nonconforming Products" means only the following: (i) the Product shipped is different than identified in Buyer's purchase order; (ii) the Product's label or packaging incorrectly identifies its contents, or (iii) product is damaged upon receipt.

10.6 If Buyer notifies, in a timely manner, Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Product, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.

10.7 The quantity of any installment of Products as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Products (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within fourteen (14) days of the date when the Products would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such products to reflect the actual quantity delivered.

10.8 Buyer acknowledges and agrees that the remedies set forth in this Section 10 are Buyer's exclusive remedies for the delivery of Nonconforming Products or non-delivery of Products. Except as provided under this Section 10, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Contract to Seller.

11. EXPORTS

Buyer represents that it shall not knowingly export, either directly or indirectly, any product or service to any country for which approval is required, without the prior written approval of the office of Export Administration of the U.S. Dept. of Commerce or any other applicable U.S. Government Agency. Buyer further represents that it shall not knowingly or unknowingly transfer Product(s) to entities restricted by United States Export Compliance regulations.

12. BUYER MATERIALS AND DATA

Buyer represents and warrants that any matter it furnishes for performance of services by Seller (i) does not infringe any copyright, trademark or other Intellectual Property Rights of any third party; (ii) is not libelous or obscene; (iii) does not invade any person's right to privacy; and (iv) does not otherwise violate any laws or infringe the rights of any third party.

13. INTELLECTUAL PROPERTY

Each party shall retain ownership of all Confidential Information and Intellectual Property it had prior to the Contract. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

14. CONFIDENTIALITY

14.1 Seller may provide the Buyer with Confidential Information in connection with this Contract. "Confidential Information" means (i) information that is designated in writing as "confidential" or "proprietary" by Seller at the time of written disclosure, and (ii) information that is orally designated as "confidential" or "proprietary" by Seller at the time of oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

14.2 Buyer agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Seller.

Notwithstanding these restrictions, (i) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (ii) Buyer may disclose Confidential Information to its auditors, (iii) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract. This Contract does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

15. INDEMNIFICATION

The indemnifying party, as Indemnitor, shall indemnify, defend and hold harmless the indemnified party, as Indemnitee, its officers, directors, employees, agents, subsidiaries, and other affiliates from and against any and all claims, damages, liabilities, and expenses (including attorney fees) arising from any third-party claim based on Indemnitor's (or its agent's) breach of any representation, warranty, covenant, agreement, or obligation under the Contract, or Indemnitor's (or its agent's) grossly negligent and/or willful acts in carrying out its obligations under the Contract, provided that in no event shall Seller be responsible for any claims arising out of its compliance with instructions, requirements, or specifications provided by or required by Buyer (including the use of information, artwork, logos, and/or trademarks provided by Buyer). Neither party will be responsible for indemnifying another party hereto where the basis of the indemnity claim arises out of such other party's own negligence or willful misconduct. In order to avail itself of this indemnity provision, Indemnitee shall promptly provide notice to Indemnitor of any such claim, tender the defense of the claim to Indemnitor, and cooperate with Indemnitor in the defense of the claim. Indemnitor shall not be liable for any cost, expense, or compromise incurred or made by Indemnitee in any legal action without the Indemnitor's prior written consent.

16. BREACH

In addition to any remedies that may be provided under the Contract, Seller may terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Contract; (ii) has not otherwise performed or complied with the Contract, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating the bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Failure to properly demand compliance or performance of any term of the Contract shall not constitute a waiver of Seller's rights hereunder. Prior to any claim for damages being made for non-conformance or breach, Buyer shall provide Seller with reasonable notice of any alleged deficiencies in the work or performance under the Contract and Seller shall have a reasonable opportunity to cure any such alleged non-conformance or breach.

17. WARRANTY

17.1 Seller warrants that Products are free from material defects in materials and workmanship and conform in all material respects to their specifications. Products shall have a warranty period of the sooner of fifteen (15) months from initial shipment from Seller's facility or twelve (12) months from the Installation, unless otherwise required by law. NO OTHER EXPRESS OR IMPLIED WARRANTY IS MADE WITH RESPECT TO THE PRODUCTS. SELLER EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. In the event of any breach of any warranty specified in this provision, Buyer's exclusive remedy shall be that Seller shall, at its option, repair or replace any defective goods at no cost to Buyer or refund any purchase price paid for such Products.

17.2 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third Party Products are not covered by the warranty in Section 17.1 above. For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

17.3 Seller shall not be liable for a breach of the warranty set forth in Section 17.1 above unless: (i) Buyer gives written notice of the defect, reasonably

described, to Seller within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Seller) returns such Products to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Products are defective.

17.4 Seller shall not be liable for a breach of the warranty set forth in Section 17.1 above if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller.

18. LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, ANTICIPATED OR LOST PROFITS, OR FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES. SELLER'S TOTAL LIABILITY FOR DAMAGES UNDER THIS CONTRACT SHALL BE LIMITED TO THE TOTAL FEES DUE HEREUNDER FOR THE INVOICE UPON WHICH A CLAIM IS BASED. SELLER SHALL NOT BE LIABLE FOR DAMAGES RELATING TO ANY INSTRUMENT, PRODUCTS OR APPARATUS WITH WHICH THE PRODUCT SOLD UNDER THIS CONTRACT IS USED. The limitation of liability set forth in this Section shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

19. NOTICE

Any notice sent pursuant to this Contract shall be in writing and sent by certified mail, return receipt requested, or by overnight mail to the addresses on the quote or to such address as either party may in the future designate. Notices shall be effective upon receipt.

20. ASSIGNMENT

Buyer shall not assign this Contract or any interest herein or right hereunder without the prior written consent of Seller. Any attempted assignment, transfer or delegation in contravention of this paragraph will be null and void and of no force and effect. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assignees.

21. STATUS

Buyer and Seller are separate entities. Except as noted in Section 9, nothing in the Contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority for or bind the other party in any manner whatsoever.

22. COMPLIANCE WITH LAW

Buyer will comply with all applicable laws and regulations including, but not limited to, export and import laws and regulations. Buyer will not directly or indirectly export, re-export, or transship the Products, Licensed Materials, or any Confidential Information in violation of any applicable country's laws or regulations. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. If an export license is required to ship the Products out of the United States, both Parties agree to provide reasonable assistance to the other in obtaining the license.

23. GOVERNING LAW

The Contract shall be governed by the laws of the State of North Carolina, without reference to conflicts of law principles. Any legal suit, action or proceeding arising out of or relating to this Contract shall be commenced in a federal court in North Carolina or in state court in the County of Wake, North Carolina, and the appellate courts thereof, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. With respect to any litigation arising out of this Contract, the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury and the prevailing party shall be entitled to recover its expenses, including reasonable attorney's fees, from the other party.

24. FORCE MAJEURE

Seller shall not be liable for any failure to perform or delay in performance of this Contract to the extent that any such failure arises from acts of God, war, civil insurrection or disruption, riots, government act or regulation, strikes, lockouts, labor disruption, cyber or hostile network attacks, inability to obtain raw or finished materials, inability to secure transport, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, power outage, or any cause beyond Seller's commercially reasonable control.

25. SEVERABILITY

If any portion of the Contract is found by a court of competent jurisdiction to be invalid or unenforceable, that provision of the Contract shall be amended to achieve as nearly as possible the intent of the parties, and the remainder of this Contract shall remain in full force and effect.

26. WAIVER

If Seller fails to enforce any right or remedy available under the Contract, that failure shall not be construed as a waiver of such right or remedy or any other right or remedy with respect to any other breach or failure by Buyer. A waiver by Seller of any of the covenants to be performed by Buyer or any breach by Buyer shall not be construed to be a waiver of any succeeding breach of such covenant or of any other covenant contained in the Contract.

27. NO THIRD-PARTY BENEFICIARIES.

This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

28. SURVIVAL.

Provisions of this Contract which by their nature should apply beyond their terms shall remain in force after the termination or expiration of this Contract including, but not limited to, the following Sections: 13, 14, 15, 18, 22, 23, and 28.