

MACOM TECHNOLOGY SOLUTIONS - TERMS AND CONDITIONS FOR QUOTATION AND SALE

UNLESS YOU HAVE A SEPARATE, SIGNED GENERAL OR MASTER PURCHASE AGREEMENT WITH MACOM TECHNOLOGY SOLUTIONS AND ITS AFFILIATES ("SELLER") WHICH IS CURRENTLY IN EFFECT AND EXPLICITLY APPLIES TO THE PRODUCTS OR SERVICES YOU ARE PROCURING FROM SELLER, THIS DOCUMENT (THIS "AGREEMENT") SETS FORTH THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN THE ORIGINAL PURCHASER ("BUYER" OR "YOU") AND SELLER FOR THE PRODUCTS AND SERVICES FOR WHICH YOU REQUEST A QUOTE AND/OR THAT YOU ACQUIRE, AND OVERRIDES AND SUPERSEDES ANY ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS DISCUSSED BY SELLER AND BUYER OR SET FORTH ON ANY BUYER PURCHASE ORDER OR OTHER RELATED DOCUMENTS.

1. **ACCEPTANCE.** Offer by Seller to Buyer of Products and Services identified on Seller's quotation and Acceptance by Seller of Buyer's purchase order ("Order") is expressly conditioned on Buyer's assent to these terms and conditions as the only terms and conditions applying to the sale of products. These terms and conditions may not be varied except by a written agreement, supported by adequate legal consideration and duly-signed by an Officer of Seller. Acceptance by Buyer of the products ("Products") shall be deemed to occur upon shipment by Seller at the shipping point. In no event shall the Products be deemed to include Software (as defined below) or unreleased parts. Buyer is prohibited from selling or reselling the Products on a standalone basis, and shall only sell, have sold, distribute or have distributed Seller's Products as a part of a sale or lease of Buyer's products provided such Seller Products are incorporated into Buyer's products.

2. **SOFTWARE.**

2.1. "Software" shall mean all software, in executable code, that is embedded, bundled or included with Products. Software is provided as-is, and without any warranty whatsoever.

2.2. Software Ownership. Buyer acknowledges and agrees that Seller retains the sole and exclusive ownership of all rights, title and interest in and to the Software and any derivatives thereof and all intellectual property rights associated therewith.

2.3. Software License. Any license of software in source code shall be covered under the terms of a separate source code license. Subject to the restrictions set forth in Section 2.4, Seller grants to Buyer a non-exclusive, non-transferable, royalty-free, worldwide license to use, copy, have copied, and distribute the Software in executable code form solely for use on or with Buyer's products that incorporate Seller's Products.

2.4. Restrictions.

2.4.1. Sublicense. Buyer may sublicense the Software only in executable code form to Buyer's customers and only as a part of a sale or lease of Buyer's products that incorporate Seller's Products. All such sublicenses must be subject to a written agreement that includes at a minimum, the restrictions set forth in this Section 2.4.

2.4.2. Buyer is prohibited from creating derivative works, disassembling, decompiling, reverse-engineering or otherwise attempting to discover or disclose methods or concepts embodied in any Software;

2.4.3. Buyer is required to include Seller's copyright and proprietary notices or markings on each sublicensed copy of any Software; and

2.4.4. No right is granted Buyer to distribute: (i) any Software or any derivative of Software as a standalone product; or (ii) any Software in source code form.

3. **WARRANTY.** Except with respect to Software, reference designs and unreleased parts, which includes prototypes, pre-release and sample parts, Seller warrants for a period of twelve (12) months from the date of original shipment (the "Warranty Period") that the Products will operate in conformity with written performance specifications set forth on Seller's most recently published product data sheet for the production version Product (the "Specifications"); provided, however, that this warranty shall not apply to any Product (i) which has been damaged, abused or misused physically or electrically (including, without limitation, by being operated outside the range of any environmental, power or operating parameters indicated on Seller's data sheet), (ii) on which the trademark shall have been defaced or obliterated or (iii) which has been reworked or repaired by any party other than Seller without Seller's prior written authorization. Buyer shall request, in writing, a return material authorization ("RMA") within the warranty period prior to returning any nonconforming Products. Any claim under this warranty must be submitted to and received by Seller within the Warranty Period. Seller's issuance of an RMA will not commit Seller to the making of any repair or replacement hereunder. Requests for RMAs must list the types and quantities of all Products involved, the reason(s) the specific Product units are alleged to be defective or otherwise non-conforming, and provide any other information reasonably required by Seller concerning operating conditions involved and the period of use. In addition, the Order number and, where possible, the original invoice number covering the original purchase of the Products involved must also be identified on the RMA request. Returned Products must be shipped, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited to Buyer for all Products found to be subject to warranty adjustment. Excessive transportation costs will not be allowed. Seller can accept no billing for packing, inspection, labor charges or other incidental costs in connection with any Products returned. Unless otherwise requested by Buyer, returned Products found not subject to this warranty will be sent back to Buyer, transportation collect. In all cases, Seller's determination will be final. With respect to Products found not in conformity with this warranty, the remedy will take the form, at Seller's option, of a replacement or repair of the defective or nonconforming Product. In the event Seller determines that it is uneconomical to replace or repair warranted Products, Seller may, at its sole option, remit the dollar equivalent based upon the original Product sales price and said remittance will be calculated by applying the pro rata percentage of the unexpired warranty to the original Product sales price. In the event of replacement pursuant to the foregoing warranty, such warranty shall apply to the replaced product. In the event of repair pursuant to the foregoing warranty, the validity of the foregoing warranty will be twelve (12) months from the date of shipment of the repaired Product less the period of time between the date of original shipment and the date on which Seller received return of the Product for repair. Seller's sole obligation and liability for non-conforming Products shall be, at its expense and at its sole option, to repair or replace them or to accept their return and refund You the applicable purchase price to the extent paid by You. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AND SHALL BE EXPRESSLY FOR THE BENEFIT OF BUYER WITH NO TRANSFER RIGHTS OR BENEFIT TO ANY THIRD PARTY. THE FOREGOING CONSTITUTES BUYER'S SOLE REMEDY AND SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY. NOTWITHSTANDING THE FOREGOING OR ANY OTHER STATEMENT

IN THIS AGREEMENT, ANY AND ALL PARTS THAT ARE SHIPPED AS SAMPLES, PROTOTYPES OR IN PRE-PRODUCTION OR PRE-RELEASE FORM, WHETHER DESIGNATED AS SUCH BY SELLER IN AN ACKNOWLEDGMENT, INVOICE, SHIPPING DOCUMENT OR OTHER WRITING ISSUED BY SELLER AS "PRE-PRODUCTION RELEASE PARTS", "PRE-PROD", "SAMPLE", "PPR" OR BY OTHER SIMILAR NOTATION IN THEIR PART NUMBER OR OTHERWISE, OR THAT OTHERWISE HAVE NOT YET BEEN RELEASED BY SELLER FOR GENERAL AVAILABILITY, MAY CONTAIN DEFECTS AND ARE PROVIDED "AS-IS, WITH ALL FAULTS" AND WITHOUT A WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. Seller reserves the right to change the part number for any pre-production release part to the applicable corresponding production released part number at any time and will notify Buyer of any such change.

4. **DELIVERY.**

4.1. Unless Seller notifies Buyer otherwise, shipments will be delivered *Ex Works (Incoterms 2020)* Seller's designated point of shipment.

4.2. All delivery dates or shipment dates are approximate and may be changed by Seller. Seller shall not be liable by reason of any delays in performance, including, but not limited to, delays caused by war, fire, strikes, floods or other natural disasters, accidents, acts of terrorism, Government priorities or regulations, delays in transportation, shortages of materials and/or supplies or any other causes beyond its reasonable control. In addition, Seller reserves the right to allocate production and deliveries amongst its various customers under any circumstances.

4.3. Die Quantity Variance. For die Products ordered hereunder, the number of die delivered to Buyer depends on the yield on the applicable wafer. Due to variances experienced in wafer yields, Seller may unilaterally amend the number of die requested in any Order to a number that is plus or minus ten percent (10%) of the requested amount. Seller may then invoice Buyer for such amended amount of die without Buyer's consent. Should the wafer yield variance exceed plus or minus ten percent (10%) of the requested amount, Seller shall obtain Buyer's consent before shipping (and invoicing for) such number of die.

4.4. For all Products scheduled for delivery within ninety (90) days or less, Seller reserves the right to make shipments when Product is available and shall invoice shipments as made. Seller will provide Buyer as much notice as is reasonably possible of any such schedule change(s).

4.5. Buyer may not request rescheduling of shipments of Order(s) or Order line item(s) that are scheduled for delivery within ninety (90) days or less. For Products that are scheduled for delivery more than ninety (90) days from the date of request, Seller may, upon receipt of Buyer's written request and at Seller's sole discretion, reschedule Order(s) or Order line item(s) on a one-time basis. Any rescheduling of Order(s) or Order line item(s), including the rescheduled delivery date, is at Seller's sole discretion and shall be subject to any additional terms and conditions that Seller may require in connection with such rescheduling. For Seller approved shipment delays, Seller may invoice Buyer for such Product and risk of loss of such Product will pass to Buyer on the date that Seller is prepared to make shipment to Buyer.

5. **PAYMENT.**

5.1. Terms are payment in advance, except where satisfactory open account credit is established, in which case terms are net thirty (30) days from the date of invoice. The amount of credit or terms of payment may be changed, or credit withdrawn, by Seller in its sole discretion at any time. No discounts are allowed. Payment shall not be withheld on account of any claim by Buyer against Seller. Seller reserves the right, among other remedies, either to cancel the Order or suspend deliveries if Buyer fails to pay for any invoice or shipment when payment becomes due.

5.2. Any tax, duty, custom, or other fee of any nature imposed upon this transaction by any federal, state or local government authority shall be paid by Buyer, in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, duty, custom or other fee, Buyer will reimburse Seller therefor.

5.3. Buyer agrees to pay Seller, on demand, interest at a rate of 1.5% per month or, if less, the maximum rate permitted by applicable law for any late payments, together with any and all related collections costs, court costs and attorneys' fees incurred in the collection of such amounts.

5.4. Unless specifically otherwise agreed in writing by Buyer and Seller, all payments are to be made in United States Dollars (USDS) and made by wire transfer in accordance with Seller's instructions.

5.4.1. If Seller permits Buyer to pay by check and Buyer is located in the U.S., the check must be drawn on a U.S. bank. All banking charges, if any, are to be pre-paid by Buyer.

5.4.2. If Seller permits Buyer to pay by check and Buyer is located outside the U.S., the check must be drawn on a Standard & Poor's triple A-rated bank headquartered in the country of Seller's principal place of business. All banking charges, if any, are to be pre-paid by Buyer.

6. **CANCELLATION.**

6.1. In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set forth herein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within sixty (60) days following receipt of written notice thereof, the party giving notice may cancel the Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Order by providing written notice to the other party in the event the other party becomes insolvent, unable to meet its debts as they become due, files a petition for bankruptcy under any provision of the bankruptcy laws in the country of Buyer or Seller as applicable, enters into any arrangement or composition with creditors, or goes or is put into liquidation. Cancellation of the Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation of an Order by Buyer pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by Seller.

6.2. Except as set forth in Section 6.1 above, Orders accepted by Seller may not be cancelled in whole or in part by Buyer. In the event Seller, at Seller's sole discretion, permits cancellation of any Order or Order line item(s), Buyer will be liable for the sales price of all finished goods, plus the total cost of all work in process, all raw materials purchased for the Product(s), including long lead time and/or bulk material, a reasonable profit and any other commitment made by, or cost incurred by, Seller (including, but not limited to, any non-recurring engineering charges) for the specific purpose of complying with the Order or Order line item(s). In no event will Buyer's liability under this section exceed the total value of the canceled portion of the Order.

7. GOVERNING LAWS; EXPORT CONTROLS AND DATA TRANSFER.

7.1. If Buyer is based in the U.S., this Agreement and the sale of the Product(s) hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law provisions and excluding the United Nations Convention on Contracts for the International Sale of Goods. A waiver by Seller of any of these terms and conditions shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed. No action shall be brought for any breach by Seller more than one (1) year after the occurrence of the cause of action therefor.

7.2. If Buyer is based outside of the U.S., this Agreement and the sale of the Product(s) hereunder shall be governed by and construed in accordance with the laws of the country of Seller's principal place of business, excluding the conflicts of law provisions thereof and the United Nations Convention on Contracts for the International Sale of Goods. A waiver by Seller of any of these terms and conditions shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed. No action may be brought for any breach by Seller more than one (1) year after occurrence of the cause of action therefor.

7.3. Buyer understands that the Products are subject to the laws and regulations of all applicable jurisdictions, which may include, but are not limited to, the United States Export Administration Regulations (15 CFR Parts 730-774) ("EAR") administered by the Department of Commerce, Bureau of Industry and Security ("BIS"), the International Traffic in Arms Regulations (22 CFR Parts 120-130) ("ITAR") administered by the Department of State, Directorate of Defense Trade Controls ("DDTC"), and the various sanctions regimes administered by the Department of Treasury, Office of Foreign Assets Control ("OFAC"). As such, Buyer recognizes/warrants the following:

7.3.1. The Products, or information related to the Products that Buyer may receive from Seller, may constitute "technology" or "technical data," as those terms are defined under the EAR and ITAR, respectively. Buyer represents that it understands the controls relevant to "technology" and "technical data" and that it will handle such technology or technical data in compliance with the EAR and ITAR's respective requirements.

7.3.2. Buyer is prohibited from selling, exporting, reexporting, or transferring Products, technology, or technical data (or other items subject to U.S. export controls, as relevant) without a license, to an individual, an entity, or a country for which a license would be required under the EAR, ITAR, or any other U.S. law. Specifically, Buyer is prohibited from selling, exporting, reexporting, or transferring Products to any person or entity designated as a prohibited/restricted party by an agency of the U.S. government, unless Buyer is authorized to do so under a license issued by the respective agency. Such prohibited/restricted persons or entities include those listed on (i) the BIS Entity List, (ii) the BIS Denied Persons List, (iii) the BIS Military End User List, (iv) the Department of Treasury, Office of Foreign Assets Control (OFAC) Specially Designated Nationals List ("SDN List"), or (v) any other restrictive trade list promulgated under U.S. law that prohibits the person or entity from receiving Products, technology, or technical data.

7.3.3. Buyer is prohibited from selling, exporting, reexporting, or transferring Products to embargoed countries prohibited by the U.S. Government under the comprehensive sanctions programs administered by OFAC or by export controls relevant to embargoed countries administered by BIS.

7.3.4. Buyer warrants that it will not provide the Products for a "military end use" or to a "military end user" in Burma (Myanmar), Cambodia, China, Russia, or Venezuela, and that it will comply with controls on military end uses/users described in 15 C.F.R. § 744.21.

7.3.5. Buyer warrants that it will not use the Products for a "military intelligence end use" or to a "military intelligence end user" in Burma (Myanmar), Cambodia, China, Russia, Venezuela, or a country listed in Country Groups E:1 or E:2 (see Supp. No. 1 to Part 740 of the EAR), and that it will comply with controls on military intelligence end uses/users described in 15 C.F.R. § 744.22.

7.3.6. Buyer warrants that it will not use the Products or any technology or technical data it may receive from Seller in conjunction with end use activities prohibited under the EAR or ITAR without authorization from the U.S. Government. Such activities include, but are not necessarily limited to, the research, design, development, manufacture, testing, use, or stockpiling of nuclear, biological, or chemical weapons, missiles, rockets, or unmanned aerial vehicles. See 15 C.F.R. Part 744 for a list of end-use/user controls under the EAR that may apply to Seller's Products or technology.

7.3.7. Products or technical data marked as "ITAR" are subject to the jurisdiction of the ITAR. Authorization from DDTC is required to export, re-export, or transfer to a foreign person (whether in the U.S. or abroad) such Products, technology or technical data.

7.3.8. Products or technology marked with an Export Control Classification Number ("ECCN") (e.g., "ECCN 3A001") are classified under the ECCN with which they are marked. Depending on the ECCN, such Products or technology may require a license from the U.S. Department of Commerce to export or re-export to certain countries. It is Buyer's responsibility to ascertain Buyer's export compliance obligations when exporting Products or technology and to comply with all applicable laws and regulations.

7.3.9. The EAR prohibit the unlicensed shipment to entities designated under Footnote 1 of the BIS Entity List (primarily Huawei Technologies Co., Ltd. ("Huawei") or any of its affiliates listed on the BIS Entity List) of certain foreign-made items that are the "direct product" of certain U.S. software/technology or that are the "direct product" of equipment that itself is a "direct product" of certain U.S.

software/technology. See 15 C.F.R. § 734.9(e). Accordingly, Seller is shipping these products on the condition and understanding that (i) they will not be used to produce any item that will be incorporated into, or used in the production or development of, any product produced, purchased, or ordered by Huawei, a Huawei affiliate, or any other entity identified under Footnote 1 of the BIS Entity List; and (ii) Huawei, a Huawei affiliate, or any other entity identified under Footnote 1 of the BIS Entity List is not a party to this transaction, including acting as a "purchaser," "intermediate consignee," "ultimate consignee," or "end-user." If Seller's understanding is incorrect, please inform Seller immediately to ensure compliance with Seller's terms and conditions for quotation and sale.

7.3.10. Buyer warrants that it will not sell, export, reexport, or transfer Products, or technology or technical data it may receive from Seller, in any other manner not specified in these terms and conditions that would be contrary to the EAR, ITAR, or any other U.S. law.

7.4. To the extent that Seller processes any personal data, such processing will be in accordance with Seller's Privacy Policy, which may be viewed at www.macom.com/privacy-policy.

7.5. Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any Products supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No. 833/2014. Buyer shall further ensure that any third parties further down the commercial chain, including, but not limited to resellers, abide by these restrictions.

7.5.1. Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers to ensure compliance with this Section 7.5.

7.5.2. Any violation of this Section 7.5 shall constitute a material breach of this Agreement and entitle Seller to seek remedies including (a) cancellation of this Agreement; and (b) a penalty of up to the entire value of the orders under the Agreement.

7.5.3. Buyer shall immediately inform Seller of any known or suspected non-compliance with this Section 7.5. Buyer shall promptly make available to Seller information concerning compliance with the obligations set forth herein following Seller's request of such information.

8. **FORCE MAJEURE.** In the event of strikes, epidemics, natural disasters, war, civil unrest, acts of terrorism, other events outside the control of Seller, as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"), Seller shall be released from performing its contractual duties under this Order to the extent that such Force Majeure is partially or wholly preventing Seller from performing its contractual duties. In such an event, Seller shall inform Buyer about the nature of the Force Majeure incident and the expected duration of the incident. In no event shall Seller be responsible or liable for any claim in connection with the non-performance or late performance of his contractual duties for the duration of a Force Majeure event.

9. TAXES AND IMPORT DUTIES.

9.1. If Buyer is based in the U.S., Buyer agrees to furnish Seller with an exempt purchase or resale certificate or, in the absence of same, assume all liabilities for all Federal, state and local taxes and duties, other than taxes based upon Seller's net income.

9.2. Except as expressly agreed to in writing by Seller, any and all customs, duties, taxes or other fees in any form which may be charged or assessed with respect to the importation into any foreign country of any Product, documentation or information furnished or sold shall be for the account of and paid for by Buyer.

10. PATENT INDEMNIFICATION.

10.1. Seller shall defend at Seller's expense every lawsuit based on a claim for infringement of a United States patent by Seller's Product brought against Buyer within one (1) year after the date of the order to which the suit pertains, and shall indemnify and hold harmless Buyer against all resulting judgments or settlements of such suit, so long as timely notice of such suit or claim and sole control of the defense, and settlement of the same, is given to Seller. Buyer shall furnish to Seller all information and assistance in connection with such suit or claim which may be reasonably requested by Seller.

10.2. If such Product is held to constitute an infringement and the use of the Product is enjoined, Seller shall, at its option, either procure for Buyer the right to continue using the Product or replace same with non-infringing Product, or modify the Product so that it becomes non-infringing, or grant Buyer a credit for the purchase price of such Product.

10.3. Notwithstanding any of the foregoing, Seller shall not be liable to Buyer hereunder for any patent infringement or for any claim thereof based upon: (i) use of the Product in combination with any materials not provided by Seller where such infringement or claim thereof would not have occurred but for such combination; or (ii) Seller's compliance with Buyer's designs or specifications; or (iii) modification of Products other than at Seller's direction; or (iv) use of an allegedly infringing version of the Product, if the alleged infringement could be avoided by use of a different version made available to Buyer, (v) the willful acts of Buyer; (vi) Seller's compliance with any industry or proprietary standard; and (vii) any settlement or compromise incurred or made by Buyer without Seller's prior written consent. The foregoing states Seller's entire liability and Buyer's sole and exclusive remedy for patent infringement and is in lieu of all other express and implied warranties.

11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS.

11.1. Unless otherwise agreed, all non-public information provided by Seller or its affiliates to Buyer, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" shall be (i) deemed Seller's "Confidential Information"; (ii) used solely for performing Buyer's obligations under this Order; and (iii) maintained by Buyer in strict confidence and shall not be disclosed or copied unless authorized in advance by Seller in writing. All Confidential Information is provided "AS-IS," without any representations or warranties of any kind. Upon the earlier of cancellation/completion of the Order to which this Agreement relates or Seller's request, Buyer shall promptly return all Confidential Information of Seller and/or its affiliates in Buyer's possession. Seller shall be entitled to injunctive relief for any violation of this Section. This

Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

11.2. Nothing shall be deemed to transfer to either party any ownership right or license of any kind in or to any of the other party's intellectual property.

11.3. Unless otherwise expressly set forth in writing by Seller, non-recurring engineering charges and all charges of a similar nature which may be billed to Buyer for work performed by Seller in connection with the sale of Products from Seller to Buyer (including but not limited to tooling charges, partial preparation charges, drawing or design charges, set-up or fit-up charges, and the like) represent only part of the cost thereof incurred by Seller. Buyer does not acquire any right, title or interest in, or license (either express or implied) to, any drawings, designs, inventions or intellectual property, or any tooling or other tangible property, by virtue of any such charges.

12. **TEST DATA.** Unless specifically noted hereon, qualification tests and any test data are not included in the selling price. Qualification tests may be performed by Seller and test data supplied at the specific request and expense of Buyer.

13. **FAIR LABOR STANDARDS ACT OF 1938.** Seller represents that with respect to the production of the articles and/or the performance of the services stated herein, it has fully complied with all of the applicable provisions of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, including sections 6, 7, and 12, regulations under FLSA section 14, and all other applicable Administrative regulations.

14. **DISPUTES.** If Buyer is based outside of the U.S., then Buyer and Seller shall attempt in good faith to resolve any dispute or disagreement ("Dispute") arising under an Order promptly by negotiation between executive management of each party who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of the Order. If any Dispute is not settled to the mutual satisfaction of Buyer and Seller, then it shall be settled at the option of either Party by any court of competent jurisdiction in accordance with the applicable laws of the country in which Seller's principal place of business is located.

15. **EXECUTIVE ORDER 11246.** In connection with performance of work hereunder, Seller agrees to comply with all provisions, including specifically paragraphs (1) through (7), Sec. 202 of Executive Order No. 11246 of September 24, 1965, as amended, and rules, regulations and order pertaining thereto.

16. **EXCLUSION OF CERTAIN DAMAGES; LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, (I) SELLER'S AGGREGATE CUMULATIVE TOTAL LIABILITY TO BUYER HEREUNDER, WHETHER FOR BREACH OF WARRANTY OR CONTRACT, INDEMNIFICATIONS HEREIN, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, SHALL NOT EXCEED THE PAYMENTS MADE TO SELLER FOR THOSE PRODUCTS PURCHASED UNDER THE ORDER WHICH GAVE RISE TO THE CLAIM, AND (II) IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF BUSINESS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO

MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN CONNECTION WITH THE ORDER OR THE PRODUCT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. **ASSIGNMENT.** This Agreement shall not be assigned by either party without the written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the above, Seller may assign this Agreement and any Order, without consent, in whole or in part, to (a) any affiliate or subsidiary or (b) a third party in the event of merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of Seller's assets to such third party.

18. **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the benefit of Buyer and Seller and their respective permitted assigns and is not for the benefit of, nor may any provision hereof, including any claims for damages, be enforced by, any other person.

19. **GOVERNMENT CONTRACTS.**

19.1. If Buyer is located in the U.S. and the Products or services being acquired hereunder are for ultimate sale to the U.S. Government, unless otherwise stated, the Product(s) or services being purchased are "commercial items" (48 C.F.R. §52.202-1) under the Federal Acquisition Regulation ("FAR"). Accordingly, Seller accepts only those flow down requirements expressly set forth in FAR 52.244-6(c)(1), and only to the extent (a) Buyer's contract with its buyer includes such clauses, (b) the flow-down of such clauses, or portions thereof, to Seller is required by law for "commercial items" as defined in FAR 2.101 and FAR 52.202-1, and (c) necessary to accomplish the purpose of such FAR and Defense Federal Acquisition Regulation ("DFAR") clauses (collectively, "U.S. Regulations").

19.2. Except as otherwise noted, where the terms "Contracting Officer" and "Contractor" appear in the text of any U.S. Regulation, such terms shall mean the "Buyer" and "Seller" respectively. References in such clauses to the "Government" shall remain as stated. All references in such clauses to "Contract" shall mean the terms of this Agreement. Under no circumstances, however, will Buyer have access to confidential or proprietary information of Seller.

19.3. Unless otherwise agreed to in writing by a duly authorized representative of Seller, no audit right, or financial, cost or pricing data, or other proprietary data will be provided to Buyer or any other person. Seller retains proprietary rights in all technical data and computer software provided under the purchase order to the fullest extent permitted under the U.S. Regulations as it relates to the sale of commercial items. To the extent legally required, Seller will grant only limited rights or restricted rights to the U.S. Government in the form of a commercial license, limited license or other restricted rights as determined by Seller. Further, Buyer agrees to retain any proprietary legends that Seller includes on the products to be furnished under this Agreement.

19.4. This Agreement conveys no rights contained in any U.S. Regulations (including rights of audit of Seller's cost or pricing data) to any person (including Buyer) other than rights that the U.S. Government may have as a matter of law.

19.5. Except as set forth above, no other U.S. Government regulations shall apply to the Products unless agreed to in writing by authorized representatives of the parties.

20. **SURVIVAL.** The provisions of Sections 7, 11 and any other clause of this Agreement that by its nature should survive the cancellation, expiration or the completion of all activities contemplated by the Order to which this Agreement relates, shall survive.

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