

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 the 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 the 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 THE 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. Seller shall not be liable by reason of any delays in performance 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. If shipment of any Product is delayed at Buyer's request, 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.

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. Rescheduling of shipments shall be by mutual agreement. Notwithstanding the foregoing, the Seller's extensive line of products requires close coordination of the Buyer's requirements with the Seller's production schedules to avoid possible delays in shipment. Accordingly, the Seller reserves the right to ship in advance of the Seller acknowledged schedule date unless the Buyer is established as a "Just in Time" (JIT) account. Unless otherwise stated on the face hereof, Seller may ship all the goods furnished hereunder at one time, or in separate parts or lots from time to time within the shipping period herein provided. Claims that the Seller did not ship the total quantity of goods shown on the face hereof will be researched and reconciled with all due diligence.

5. **PAYMENT.**

5.1. If Buyer is located in the U.S., the following payment terms apply:

5.1.1. Payment shall be due and payable thirty (30) days from date of invoice. 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.

5.1.2. 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 the 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.

5.1.3. Unless specifically otherwise agreed in writing by Buyer and Seller, all payments are to be made in United States Dollars (USD\$). If made by check, the check must be drawn on a U.S. Bank. All banking charges, if any, are to be pre-paid by the Buyer.

5.2. If Buyer is located outside the U.S., all payment terms are measured from the date of invoice and payments are to be made in the agreed-upon currency as designated in the applicable Seller quotation. If made by check, 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 the Buyer.

5.3. Buyer agrees to pay Seller, on demand, interest at 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 overdue amounts.

6. **CANCELLATION.**

6.1. **Cancellation if Buyer in U.S.** 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 chapter of the U.S. bankruptcy laws, 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. **Cancellation if Buyer Outside of U.S.** 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.

6.3. Orders accepted by Seller can only be cancelled for Buyer's convenience by providing written notice at least thirty (30) days prior to the acknowledged ship date. In the event an Order is canceled for Buyer's convenience, 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, including long lead time and/or bulk material, a reasonable profit and any other commitment made by, or cost incurred by, the Seller for the specific purpose of complying with the Order. 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 the 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 ("EAR") or the International Traffic in Arms Regulations ("ITAR"). Diversion contrary to U.S. law is strictly prohibited. Details of the EAR can be found at <http://www.bis.doc.gov>. Details of the ITAR can be found at <http://www.pmdtc.state.gov>. Seller products may not be sold, exported or re-exported to any person or entity designated as prohibited or restricted by an agency of the U.S. government. For a listing of prohibited parties, see "Lists to Check" at <http://www.bis.doc.gov>. Sales or retransfers of Seller products may not be made to embargoed countries prohibited by the U.S. Government under the restrictions of the Department of the Treasury or the Department of Commerce. See <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>, and <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations> for additional information. Seller products are prohibited by law from being used in conjunction with certain activities without authorization from the U.S. Government. This includes exports, reexports, or transfers of the Products to certain nuclear activities; to certain missile, rocket, or unarmored aerial vehicle activities; and to chemical and biological weapons end uses. Buyer further warrants that it will not use the Products for a "military end use" in China, Russia, or Venezuela and that it is not a "military end user" located in China, Russia, or Venezuela. A "military end use" means incorporation into a military item or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military items. A "military end user" means a person or entity that is part of the national armed services, such as the army, navy, marine, air force, or coast guard, as well as the national guard, national police, government intelligence or reconnaissance organization, or any person or entity whose actions or functions are intended to support "military end uses." In addition to the restrictions described above in this section, Products marked as "ITAR" are subject to the jurisdiction of the ITAR. This means that in order to export or re-export such products or to transfer them to a foreign person, whether in the U.S. or abroad, authorization from the U.S. Department of State is required. Products marked as "ECCN 3A001" have an ECCN of 3A001. This means that in order to export or re-export this product to certain non-U.S. destinations, a license from the U.S. Department of Commerce is required. Details of the requirements of ECCN 3A001 of the Commerce Control List can be found at <http://www.bis.doc.gov>. Seller reminds You that it is Your responsibility to ascertain Your export compliance obligations and to comply with all applicable laws and regulations.

7.4. The EAR prohibit the unlicensed shipment of foreign-made items produced by equipment such as those in this order if a Huawei company is involved. 15 C.F.R. Part 744, Supp. No. 4, Footnote 1. 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 a Huawei company or affiliate; and (ii) a Huawei company or affiliate is not a party to this transaction. If Seller's understanding is incorrect, please inform Seller immediately to ensure compliance with Seller's terms and conditions for quotation and sale.

7.5. 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.

8. **FORCE MAJEURE.** In the event of strikes, epidemics, natural disasters, war, civil unrest, acts of terrorism, other events outside the control of the Seller, as well as other force majeure cases commonly recognized under applicable law ("Force Majeure"), the Seller shall be released from performing its contractual duties under this Order to the extent that such Force Majeure is partially or wholly preventing the Seller from performing its contractual duties. In such an event, the Seller shall inform the Buyer about the nature of the Force Majeure incident and the expected duration of the incident. In no event shall the 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 the 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 the Seller and test data supplied at the specific request and expense of the Buyer.

13. **FAIR LABOR STANDARDS ACT OF 1938.** The 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 the Seller's principal place of business is located.

15. **EXECUTIVE ORDER 11246.** In connection with performance of work hereunder, the 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 the 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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