



ASTRONICS TEST SYSTEMS INC. ("Seller") TERMS AND CONDITIONS OF SALE- TS001

PURCHASER ACCEPTANCE

These Terms and Conditions constitute a binding contract between Purchaser and Seller and are referred to herein as either "Terms and Conditions" or this "Agreement". Purchaser accepts these Terms and Conditions by making a purchase from or placing an order with Seller or otherwise requesting products (the "Products"). If, however, for any reason the Purchaser fails to accept this order in writing, any conduct by the Purchaser which recognizes the existence of this order, including but not limited to acceptance of delivery of the items set forth in this order, payment of fees owed to Seller for this order or uses the product in any way shall constitute acceptance of the Seller order and all of its terms and conditions. Any terms proposed by Purchaser which require acceptance of Seller in order to add to or, vary from or conflict with these Terms and Conditions are hereby rejected by the Seller unless agreed to in writing by the Seller. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes and replaces in its entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

PRICES

The prices set forth on the reverse side are based upon the manufacture of the quantity and type of Products ordered and are subject to revision when interruptions, engineering changes or changes in quantity are caused or requested by the Purchaser. Clerical errors made by Seller are subject to correction.

SPECIFICATIONS

Weights and dimensions set forth in sales literature are not guaranteed unless previously certified. Seller may, without the obligations under this Agreement, make insignificant changes in specifications.

TERMS OF PAYMENT

Terms of Payments on any approved order are net 30 days from date of invoice unless otherwise specifically stated on the reverse side thereof. Interest accrues on overdue invoices at the rate of 1% per month from the original due date of the invoice or the maximum amount allowed by law. Extended terms waiving interest charges must be arranged prior to shipment and approved by Seller. All purchase orders are accepted subject to, and the obligation of Seller to make deliveries is subject to, the right of Seller to require of the Purchaser payment of all or any part of the purchase price in advance of delivery or to make shipments C.O.D. If the Purchaser fails to make advance payment when requested by Seller, or if the Purchaser is or becomes delinquent in the payment of any sum due to Seller (whether or not arising out of the sales order) or refuses to accept C.O.D. shipments, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or in equity, to cancel the sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts of goods previously delivered to the Purchaser. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly.

SHIPMENTS

All shipments are, unless otherwise specifically provided, F.O.B. place of manufacture or warehouse location that is the address set forth on the reverse side hereof. The cost of packaging for domestic shipment is included in the quoted price. Where special domestic, export or MIL Standard packing is specified, involving greater expense, a charge will be made to cover such extra expense. All claims for breakage and damage, except on parcel post shipments, should be made to the carrier but Seller will render all possible assistance in securing satisfactory adjustment to such claims. Claims against parcel post shipments should be communicated immediately to the factory for adjustment. Seller assumes no responsibility for delay, breakage, or damage after having made delivery in good order to the carrier, except for parcel post shipments. Shipments shall be made in the manner and by the carrier requested by the Purchaser, but where questions arise concerning suitability of carriers for handling specific instruments, the decision of Seller must be accepted.

DELIVERY

The scheduled shipping or delivery date is our best estimate of the time the order will be shipped from our factory and we assume no liability for loss, damage, or consequential damages due to delays.

TAXES

Federal, state or local excise, sales or use taxes shall be paid by the Purchaser.

PATENTS

Seller shall defend any suit or proceeding brought against the Purchaser so far as based upon an assertion that any Product, or any part thereof, furnished under this order constitutes a direct infringement of any United States patent having a claim or claims covering solely the Product itself, or any part thereof, or the normal use for which such Product was designed, if notified promptly in writing and giving authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against the Purchaser. In case said Product, or any part thereof, is enjoined, Seller shall at its own option and at its own expense, either (1) procure for the Purchaser the right to continue using said product or part, (2) replace the same with a non-infringing Product, (3) modify it so it becomes non-infringing, or (4) remove said Product and refund the purchase price and transportation costs thereof. The foregoing states the entire liability of Seller for patent infringement by said Product thereof.

DESIGN RIGHTS RESERVATION

Purchaser acknowledges and agrees that by the acknowledgement or acceptance of this Agreement, Seller does not relinquish, sell, transfer, or in any way release any of the designs, design drawings or data, or any other information or rights relating to the subject matter of this order. Any license under or title to such designs, data, information, or other rights must be the subject matter of a separate contract to be valid or binding on Seller and anything in the order to which this acknowledgement or acceptance relates to the contrary is hereby expressly rejected and not accepted.

WARRANTY

EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, IS EXPRESSLY EXCLUDED.

Items sold by Seller under this purchase order are warranted only as stated below:

Subject to the exceptions and upon the conditions specified below, Seller agrees to correct, either by repair, or, at its election, by replacement, any defects of material or workmanship which develop within one year after delivery of the instrument to the Purchaser by Seller or by an authorized representative provided that investigation and factory inspection by Seller discloses that such defect developed under normal and proper use.

The exceptions and conditions mentioned above are the following:

- Some components and/or accessories by their nature are not intended to, and will not, function for one year. If any such component or accessory manufactured by Seller, and part of the item sold, fails to give reasonable service for reasonable period of time, Seller will, at its election replace or repair such component or accessory. What constitutes reasonable service and what constitutes a reasonable period of time shall be determined solely by Seller after Seller is in possession of all the facts concerning operating conditions and other pertinent factors and after such component or accessory has been returned to Seller, transportation prepaid.
- All items claimed defective must be returned promptly to Seller after discovery of such defect, transportation charges prepaid, and will be returned or replaced to the Purchaser with the transportation charges collect unless the item is found to be defective, in which case Seller will pay the return transportation charges.
- Seller makes no warranty concerning components or accessories not manufactured by it. However, in the event of the failure of any component or accessory not manufactured by Seller, Seller will give reasonable assistance to the Purchaser in obtaining from the respective manufacturer whatever adjustment is reasonable in the light of the manufacturer's own warranty.

Seller shall be released from all obligations under its warranty to the extent the Products (i) have been altered, repaired or modified by persons other than Seller's authorized service personnel, unless such repairs by others are made with the written consent of Seller, or (ii) have been misused or negligently handled or operated by Purchaser.

Representations and warranties made by any person, including dealers and representatives of Seller, which are inconsistent or in conflict with the terms of this warranty (including but not limited to the Limitations of the Liability of Seller as set forth below), shall not be binding upon Seller unless reduced to writing and approved by an officer of Seller.

LIMITATION OF LIABILITY

UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF EITHER PARTY'S ACT OR FAILURE TO ACT, WHETHER SUCH DAMAGES ARE PREMISED IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE ENTIRE LIABILITY OF SELLER FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE DOLLAR AMOUNT PAID BY PURCHASER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM.

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THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

GOVERNING LAW

THESE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, AND ANY SALE OF PRODUCTS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN ORANGE COUNTY, CALIFORNIA, AND PURCHASER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. PURCHASER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

EXPORT RESTRICTIONS

Purchaser shall not export, re-export or transfer, directly or indirectly, any product or technical data received hereunder, to any country or end user to which such export, re-export or transfer is restricted by United States Export Control Regulations or local country law or regulation, without first obtaining any required export license, authorization, certification or approval. If Purchaser resells or otherwise disposes of any Product purchased hereunder Purchaser will comply with any export restrictions applicable to such transfer.

Purchaser shall indemnify, defend and hold Seller harmless from and against any loss, liability, cost or expense (including reasonable legal fees) related to any action arising from Purchaser's failure to comply with this Section.

CANCELLATIONS, DELAYS, RETURNS & CREDITS

Seller will apply the following cancellation charges to standard Products: 5% 60 days prior to shipment, 10% 30 days prior to shipment and 25% seven days prior to shipment. A 25% restocking charge will apply to all returned items, which are accepted if within 90 days of shipment. All returns are subject to inspection. Transportation charges for returned items will be at the Purchaser's expense.

A cancellation charge on specials and limited availability Products will be 100% of the quoted price if engineering, scheduling or ordering of special parts has begun. U.S. Government Acquisition Regulation guidelines apply to government and prime contractor orders terminated for "convenience."

Seller will apply the following cancellation or delay charges to integrated test systems:

- Prior to CDR (Critical Design Review), Purchaser is responsible for charges associated with restocking custom components, and any NRE to date.
- From CDR (Critical Design Review), through 4 weeks following, Purchaser is responsible for 50% of recurring system price (material & labor) and any NRE to date.
- 4 weeks following CDR (Critical Design Review) and beyond, 100% cancellation fees apply.
- Customer directed delayed shipment for more than 30 days is subject to a cost incurred to date charge.

REPAIRS

In the event the Seller is unable to procure new parts; assemblies; or components required to repair a Product which is no longer under warranty, Purchaser hereby authorizes Seller to use reconditioned, used or after market parts, assemblies or components in the repair of the product.

ARBITRATION

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and not limited to, statutory, common law, intentional tort and equitable claims) arising from or relating to the Products, the interpretation or application of these Terms and Conditions or any Statement of Work or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Statement of Work (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), (collectively, a "Claim") WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. Arbitration will be conducted pursuant to the Rules of the American Arbitration Association. Neither Seller nor Purchaser will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. **Further, Purchaser will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim.** Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Irvine, California. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. **Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Products will be exclusively litigated in court rather than through arbitration.**

MISCELLANEOUS

Seller may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement or any Statement of Work will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Seller and Purchaser is that of independent contractors and not that of employer/employee, partnership or joint venture. If any term or condition of this Agreement or a Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof or the whole of this Agreement or the applicable Statement of Work. Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.