

# Astronics Ballard Technology

## Terms and Conditions of Sale

These Terms and Conditions of Sale (“Terms”) will govern all business transactions for the sale of products or any parts of or for them or services or licensing of software (individually a “Product” and collectively the “Products”) between Ballard Technology, Inc. (“BALLARD”) and the customer (“Customer”). BALLARD’s acceptance of any purchase order issued by Customer (“Purchase Order”) is expressly conditioned upon Customer’s acceptance of the Terms, whether or not referenced in that Purchase Order. Any additional or different terms and conditions stated or referenced in Customer’s Purchase Order or other communication are objected to and will not bind BALLARD unless specifically agreed to in writing by a BALLARD authorized representative. Any Purchase Order or authorization by Customer, whether written or oral, to furnish Products constitutes acceptance of the Terms.

### 1. GENERAL PROVISIONS

- a. The Terms, along with any other terms and conditions or documents referenced in the Terms, contain the complete agreement between the parties, and no amendment, rescission, waiver or other modification will bind BALLARD unless agreed to in writing by a BALLARD authorized representative. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced in the Terms will not bind BALLARD. The invalidity, in whole or part, of one or more sections or subsections of the Terms will not affect the remainder of any such section or subsection or any other section or subsection.
- b. The Terms will be governed by the laws of the State of Washington without regard to its conflict of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Terms.
- c. BALLARD reserves the right to subcontract any of its work to one or more subcontractors.
- d. Customer shall not assign any of its rights or obligations under the Terms without the prior written consent of BALLARD.
- e. Unless a separate non-disclosure agreement relating to the subject matter of the Purchase Order exists between the parties, neither party shall disclose any confidential information to the other party.

### 2. WARRANTY AND RETURNS

- a. BALLARD’s Limited Warranty (document AD195) applies to the Product at the time the Product was purchased from BALLARD.
- b. If Customer wants to return the Product for repair, replacement, or credit, it shall promptly notify BALLARD in writing. After receipt of a Return Material Authorization (RMA) number, Customer may return the Product to BALLARD, transportation charges prepaid. Customer shall provide detailed information about the Product’s performance issues and the installation in which the Product was used. BALLARD may charge an evaluation fee when no fault is found or when the Product is out of warranty. BALLARD shall provide a quotation for the cost of non-warranty repair.
- c. BALLARD will not accept the Product returned for credit without prior written permission to Customer. The value of any credit to be issued to Customer for returned Product will be at BALLARD’s sole discretion.

### 3. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- a. BALLARD retains exclusive rights to its Products, intellectual property rights (including copyrights, trademarks, patents and trade secrets), software, schematics, logic diagrams, and manufacturing processes, and to all modifications funded by Customer’s Purchase Order. BALLARD retains ownership and will not convey, nor will Customer or

Customer’s final customer obtain any right, title, or interest in, software or firmware, specifications or data furnished or developed by BALLARD either before or in the performance of Customer’s Purchase Order.

- b. BALLARD shall deliver Products sold under the Terms free of any third party claim for United States patent infringement. If promptly notified in writing by Customer of an infringement claim, BALLARD shall control the defense of any such claim, including appeals, negotiations, and any settlement, against the Customer, on condition that Customer has the right to approve the terms of any settlement that restricts its rights granted under the Terms or subjects it to any ongoing obligations. BALLARD shall pay all damages and costs if an infringement claim is granted against the Customer, other than damages and costs arising from any willful infringement by Customer after receipt of notice of the claimed infringement. BALLARD is not responsible for any settlement made by Customer without the prior written consent of BALLARD. If as a result of a lawsuit any of the Products are held to constitute patent infringement and the use for the purpose intended of the Products is enjoined, BALLARD shall, at its expense and option, either procure for the Customer the right to continue using the Products, or replace them with non-infringing Products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Customer. This section 3(b) states the entire liability of BALLARD for patent infringement.
  - c. BALLARD is not liable to Customer under section 3(b), and Customer shall hold BALLARD harmless against any infringement or claim, if the infringement or claim is based in whole or in part upon:
    - i. a product not of BALLARD manufacture;
    - ii. a customized Product or a Product manufactured to Customer’s design;
    - iii. a modification of the Product not introduced or approved in writing by BALLARD; or
    - iv. the interconnection or use of the Product in combination with equipment, software or other devices not made or supplied by BALLARD.
  - d. Many aspects of the design, production and operation of the Product, in whichever form, are proprietary information and trade secrets of BALLARD. Customer shall not, directly or indirectly, disclose, copy or otherwise transfer that information and trade secrets to any nonparty. Customer shall not reverse engineer or assist a nonparty to reverse engineer any Product or parts of it.
- ### 4. SHIPPING AND DELIVERY; TITLE
- a. Unless otherwise indicated on BALLARD’s quotation, prices quoted do not include shipping. Delivery of Products will be made FCA BALLARD facility or other point of shipment (Incoterms 2010). Title to the Product and risk of loss or damage will pass to Customer upon delivery of Product by BALLARD to the common carrier. Customer hereby grants BALLARD a security interest in the Product until the invoice covering the Product has been paid in full. Title to services shall pass pro rata as the services are performed.
  - b. Unless otherwise agreed by the parties in writing:
    - i. BALLARD may at Customer’s expense determine the method and routing of all deliveries;
    - ii. delivery dates and times are approximate and based on:

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1. prompt receipt by BALLARD of all information necessary to permit BALLARD to proceed with work immediately and without interruption;
  2. Customer's compliance with the payment terms; and
  3. prompt receipt by BALLARD of all evidence BALLARD may request that any required export or import license, as applicable, is in effect.
- iii. the prices for BALLARD's standard product acceptance tests; and
  - iv. partial deliveries are permitted.
- c. If BALLARD consents to delay shipments at Customer's request, payment will be due on the date when BALLARD is prepared to make shipment. If any such delay occurs, title will pass to Customer and the Products will be held at Customer's risk and expense. If Customer's written request is for custom Products, or is not received at least thirty (30) days in advance of BALLARD's originally scheduled ship date, BALLARD may assess a fee of one percent (1%) of the total value of the Products per month for each month the shipment is delayed in order to compensate for inventory and material handling/storage costs.
  - d. BALLARD shall prepare, pack and ship the Products in accordance with good commercial practices unless otherwise agreed by the parties. A complete packing list will be enclosed with each shipment. Customer agrees to reimburse BALLARD for any costs for any non-standard packing, marking or shipping directions contained in the Purchase Order.
- 5. PRICE, PAYMENTS AND FINANCIAL CONDITION**
- a. The prices of the Products are stated in BALLARD's quotation, which may be changed at any time upon notice to Customer. A quotation is valid for a period of sixty (60) days, unless otherwise stated in the quotation.
  - b. Unless otherwise agreed by the parties in writing, the following payment terms apply: (a) if BALLARD grants credit terms, Customer shall make payments in U.S. Dollars without setoff within thirty (30) days from the date of invoice; (b) at BALLARD's sole discretion, a Letter of Credit may be required for international transactions; (c) if BALLARD provides partial shipments or services, Customer shall make payments on a pro rata basis; and (d) payments will be made to BALLARD's remittance address as shown on the invoice.
  - c. Customer shall pay a monthly late payment charge computed at the rate of one and a half percent (1.5%), or the maximum interest rate permitted by law, whichever is less, on any past due amount for each calendar month (or a fraction of the calendar month) that the payment is overdue. Customer shall reimburse BALLARD's costs and expenses, including reasonable attorney's fees, and costs associated with compromises and judgments arising from BALLARD's collection efforts. If Customer defaults in the payment, BALLARD retains a security interest and right of possession in the Products until Customer makes full payment, and Customer agrees to sign documentation at BALLARD's request as reasonably necessary to perfect that interest.
  - d. Unless otherwise specified in BALLARD's quote, fifty percent (50%) of any non-recurring engineering charges ("NRE") will be due and payable at acceptance of the Purchase Order or contract execution. The balance of the NRE (the "NRE Balance") will be due and payable within thirty (30) days after completion of the NRE work. If the NRE contract or Purchase Order is cancelled after commencement but before completion of NRE work, BALLARD is entitled to payment of a percentage of the NRE Balance equal to the percentage of NRE work completed before cancellation, as reasonably determined by BALLARD. All NRE charges are nonrefundable.
- e. Any requests for changes of the Product will be considered only if BALLARD and the Customer agree in writing on the specifications of the change and the corresponding changes to pricing and/or schedule.
  - f. If at any time BALLARD determines that the Customer's financial condition does not justify continued performance on the terms of payment previously agreed upon, BALLARD may require full or partial payment in advance or is entitled to terminate this agreement without any liability to the Customer. If Customer becomes insolvent or if any proceeding is brought by or against the Customer, voluntarily or involuntarily, under bankruptcy or insolvency laws, BALLARD is entitled to suspend or terminate this agreement without any liability to the Customer.
- 6. TAXES AND DUTIES**
- a. Unless otherwise indicated on BALLARD's quotation, prices quoted do not include any taxes, export/import duties, customs fees or brokerage fees, all of which will be the responsibility of the Customer.
  - b. BALLARD will invoice the Customer for any applicable taxes unless, at the time of the issuance of the Purchase Order, the Customer furnishes or has furnished BALLARD with evidence of exemption acceptable to the taxing authorities.
- 7. LIMITATIONS OF LIABILITY**
- a. BALLARD'S ENTIRE LIABILITY ON ALL CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR THESE TERMS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY PRODUCTS OR SERVICES COVERED BY OR FURNISHED UNDER THE TERMS OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), WILL, IN THE AGGREGATE, IN NO CASE EXCEED THE CONTRACT PRICE OF THE PRODUCT OR SERVICE GIVING RISE TO THE CLAIM. EXCEPT AS TO TITLE TO ANY PRODUCTS FURNISHED, ALL SUCH LIABILITY WILL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD REFERENCED IN SECTION 2 ABOVE.
  - b. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, FAILURE OF A REMEDY TO ACCOMPLISH ITS ESSENTIAL PURPOSE, OR OTHERWISE, SHALL BALLARD, ITS EMPLOYEES OR SUPPLIERS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF THE CUSTOMER FOR SUCH DAMAGES, AND THE CUSTOMER SHALL INDEMNIFY BALLARD, ITS EMPLOYEES AND SUPPLIERS AGAINST ANY SUCH CLAIMS FROM THE CUSTOMER'S CUSTOMERS. IF CUSTOMER FURNISHES THE PRODUCTS OR SERVICES PROVIDED BY BALLARD TO A NONPARTY BY CONTRACT OR RELATE TO A CONTRACT BETWEEN THE CUSTOMER AND A NONPARTY, THE CUSTOMER SHALL OBTAIN FROM THAT NONPARTY A PROVISION AFFORDING BALLARD AND ITS SUPPLIERS THE PROTECTION OF THIS SECTION 7b AND THE PRECEDING SECTION 7a.

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- c. The Products to be licensed or sold under the Terms are not intended, warranted or certified for any particular use or application. These Products are not intended for use in any nuclear, chemical or weapons production facility or activity, any life-support equipment, any application critical to the flight, power, or control of aircraft, or any other application where failure of the Products could lead directly to death, personal injury or severe physical or environmental damage. If so used, BALLARD disclaims all liability for any damages arising as a result of the hazardous nature of the application in question, including but not limited to nuclear, chemical or environmental damage, injury or contamination, and Customer shall indemnify, hold harmless and defend BALLARD, its officers, directors, employees and agents against all such liability, whether based on contract, warranty, tort (including negligence), strict liability, or any other legal theory, regardless of whether BALLARD had knowledge of the possibility of such damages.
- d. The Customer is responsible for establishing and assuring suitability of use, proper installation and testing prior to use, proper usage, and the obtaining and maintaining of certification and clearance requirements of the Products to be licensed or sold under the Terms for their particular use or application. If BALLARD furnishes the Customer with advice or assistance concerning any Products or systems which is not required under the Terms, the furnishing of such advice or assistance will not subject BALLARD to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.
- 8. EXCUSABLE DELAYS**  
BALLARD is not liable for breach of its obligations under the Terms if performance of the obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including but not limited to acts of God, acts (or omissions) of the Customer or its suppliers or representatives, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, terrorist-related activities, riot, delays in transportation, or inability to obtain or delay in obtaining suitable labor, materials, or facilities, including any vendor's alleged infringement of third party intellectual property rights. If any such delay occurs, the time of performance will be extended for a period equal to the time lost by reason of the delay. If BALLARD is delayed by acts of the Customer or by prerequisite work by other contractors or suppliers of the Customer, BALLARD is entitled to an equitable price adjustment in addition to extension of the time of performance.
- 9. EXPORT**  
If Customer exports (or re-exports), directly or indirectly, any Products or technical data supplied under the Terms or any portion of it, it is Customer's responsibility to assure compliance with U.S. and other applicable export control laws and to obtain any required licenses or approvals in its own name. Customer is also responsible for the accuracy and completeness of any information or certification provided by Customer for purposes of export control compliance.
- 10. GOVERNMENT CONTRACTING**  
a. If Customer elects to sell products or services provided under the Terms to the U.S. Government or to a prime contractor selling to the U.S. Government, Customer does so solely at its own option and risk, and agrees not to obligate BALLARD as a subcontractor other than under the provisions of FAR 52.244-6, Subcontracts for Commercial Items (Jul 2018). Customer remains solely responsible for compliance with all other statutes and regulations governing sales to the U.S. Government. BALLARD makes no representations with respect to the ability of its goods, services or prices to satisfy any such statutes and regulations, including without limitation DFARS 252.225-7008, Restriction on Acquisition of Specialty Metals (Mar 2013) and/or DFARS 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals (Oct 2014), other than those contained herein.
- b. With respect to Equal Employment Opportunity requirements, BALLARD represents that it complies with the following FAR clauses:
- FAR CLAUSE TITLE**  
52.222-26 Equal Opportunity (Sept 2016)  
52.222-35 Equal Opportunity for Veterans (Oct 2015)  
52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014)  
52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)  
52.222-50, Combating Trafficking in Persons (Mar 2015)
- c. U.S. GOVERNMENT RIGHTS to Software: Software provided under the Terms is "commercial computer software" as that term is defined in 48 CFR 2.101 and in DFARS 252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (Feb 2014). As stated in 48 CFR 12.212 and DFARS 227.7202-1 through 227.7202-4, the software and related computer software documentation is provided with the commercial license rights and restrictions.
- d. U.S. GOVERNMENT RIGHTS to Technical Data: Technical data provided under the Terms with regard to commercial items and the use, duplication or disclosure of any such technical data by the U.S. Government is subject to the commercial license rights and restrictions as stated in DFARS 252.227-7015 Technical Data-Commercial Items (Feb 2014), paragraphs (b)(1) and (b)(2).
- 11. TERMINATION/CHANGE/ RETURN**  
a. Customer may cancel or revise any Purchase Order issued under the Terms for any reason, on condition that Customer shall provide BALLARD with a written notice at least sixty (60) days before the ship date for standard Products and at least ninety (90) days before the ship date for custom or customized Products. In such case Customer will be responsible for all reasonable cancellation charges, including costs of already-completed Products, the price of all Products shipped to Customer (and which remain unpaid), specialized components, work-in-process inventory, unamortized tooling and actual supplier cancellation and restocking fees ("Cancellation Charges"). BALLARD shall submit to Customer a detailed listing of all Cancellation Charges, documentation or evidence bearing on the payment of such Cancellation Charges and additional information, as Customer shall reasonably request. Upon receipt and acceptance of the Cancellation Charges, Customer shall issue its Purchase Order to BALLARD in satisfaction of the Cancellation Charges.
- b. A scheduled ship date of a Product cannot be modified within sixty (60) days of the scheduled ship date without prior authorization in writing from BALLARD. Ship dates extended out more than ninety (90) days may be subject to a surcharge.
- c. Customer may return a standard Product for credit within thirty (30) days of receipt only if the Product is complete in unopened original packaging with all manuals, disks, cables and other accessories. All returned Product is subject to a minimum of twenty-five percent (25%) restocking fee. Used, open, custom or customized Product is not returnable.

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### 12. ADDITIONAL PROVISIONS FOR SERVICES

- a. BALLARD shall perform any non-product development related services ("Professional Services") under the Terms, and Customer shall make payment to BALLARD for the Professional Services provided, in accordance with the schedule and specifications in BALLARD's quotation. Upon completion of a Professional Services deliverable, and at BALLARD's request, Customer shall provide a certificate of acceptance of each deliverable. Upon final completion of the Professional Services, and at BALLARD's request, Customer shall provide a certificate of final completion.
- b. Either party may terminate an agreement for Professional Services for cause, and seek all remedies available to it at law. If the other party: (a) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed, or is the subject of a proceeding under bankruptcy or insolvency law; (b) fails to make payment under the Terms when due which failure continues for fifteen (15) days after written notice of payment delinquency; or (c) breaches the Terms in any other material respect and that breach is not cured within sixty (60) days after written notice of that breach is given by the non-breaching party (plus reasonable additional time if that breach cannot reasonably be cured within the period specified and a cure is promptly commenced and diligently pursued).
- c. BALLARD may suspend its performance of Professional Services under the Terms without waiving its right to terminate for cause in accordance with section 12b. Customer may for its convenience direct BALLARD to suspend its performance of services under the Terms, on condition that it gives at least fifteen (15) days prior written notice of suspension to BALLARD. If performance of services is suspended under this section, BALLARD is entitled to an equitable price adjustment to reflect its expenses as a result of the suspension, plus a reasonable profit.
- d. If this agreement for the performance of Professional Services expires, is completed or is terminated, the following obligations of Customer will survive: 1 (general provisions), 2 (warranty and returns), 3 (intellectual property and confidentiality), 5 (price, payments and financial condition), 7 (limitations of liability), 8 (excusable delays), and 9 (export).

### 13. SOFTWARE LICENSE

- a. If any third party software and its accompanying computer software documentation is provided with the Products supplied under the Terms, the software and its accompanying computer software documentation will be subject to the terms and conditions of that third party's software license terms, on condition that BALLARD has provided Customer with copies of these terms before Customer's use of the software. If any of the Terms conflicts with a third party license, the terms of the third party license will prevail. Third party software vendors will be deemed third party beneficiaries of the software license granted by this section and may enforce the terms of this section directly against Customer and its successors in interest with respect to their software.
- b. The following software license terms will apply to any Product for which a definitive software license has not been provided. If any Product supplied under the Terms contains any software (including any embedded code sometimes referred to as "firmware"), title to any such software is retained by BALLARD (although title to the media containing that software is transferred to Customer) and the software and its accompanying computer software documentation is subject to the following license. BALLARD hereby grants to Customer, and

Customer accepts from BALLARD, a perpetual, nontransferable and nonexclusive license to the software and its accompanying computer software documentation supplied under the Terms solely for use in and with the Products with which the software is supplied. Customer agrees not to copy or use the software or its accompanying computer software documentation for any other purpose. Customer agrees not to translate, modify, reverse compile, reverse assemble or otherwise reverse engineer, or create derivative works based on any of the software, or permit another to do so. This license may only be transferred in connection with the sale or other transfer of the Products with which it was supplied.