



BENSHAW STANDARD TERMS AND CONDITIONS OF SALE

APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT. Unless otherwise provided, the sale by Benshaw, Inc. ("Seller") of any products or services described herein shall be governed solely by these terms and conditions of sale and such other provisions agreed upon in writing by duly authorized representatives of Seller. Any oral understandings are expressly excluded. Seller shall not be deemed to have waived these terms and conditions of sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's purchase order, written acknowledgement or other authorization to proceed, which provisions are hereby expressly rejected. Buyer's silence or acceptance or use of products constitutes its acceptance of these terms and conditions of sale. These terms and conditions of sale shall apply to any order for products whether or not they are referenced in such order.

CANCELLATION. Buyer has no right to cancel this order, in whole or in part, absent the prior written agreement of Seller.

PRICES AND PAYMENTS. After formal credit approval, payment terms are net thirty (30) days from the date of invoice. Without credit approval, ten percent (10%) of the total price is due in advance, with the balance C.O.D. A one and one half percent (1.5%) monthly service charge will be added to invoices not paid within thirty (30) days of the Invoice date. If, in Seller's sole judgment, the financial condition or credit-worthiness of Buyer does not warrant shipment of the products ordered, Seller may at its option require full payment prior to shipment, or may refuse to ship without Seller incurring liability to Buyer.

CONFLICTING PROVISIONS. In the event of any conflict between these terms and conditions of sale, and the provisions contained in any purchase order, confirmation, or other similar document issued to Seller by Buyer, the provisions of these terms and conditions shall prevail.

ASSIGNMENT. Neither party shall assign these terms and conditions of sale and any purchase order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Seller may assign this agreement to any entity controlled by or under common control of Benshaw, Inc.

WAIVER. Failure by Seller to assert all or any of its rights upon any breach of these terms and conditions of sale shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service.

INSPECTION. Buyer shall inspect and accept or reject products delivered pursuant to these terms and conditions and the purchase order promptly after Buyer takes custody of such products. In the event the products do not comply with the applicable specifications, Buyer shall notify Seller of such noncompliance and Seller shall have a reasonable opportunity to correct any such noncompliance. Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such noncompliance in the event Seller does not receive such notification from Buyer within fifteen (15) days after Buyer takes custody thereof.

WARRANTY. Seller warrants that the products and services delivered to Buyer shall be free from defects in material and workmanship, provided that the unit has not been subject to accident, abuse, or misuse, and that the unit has been operated in accordance with the manufacturer's recommendations. Such warranty shall be effective for a period of 12 months after installation or 18 months after delivery, whichever occurs first. If a product is determined to be in breach of this warranty, Seller shall repair or replace such product, at its option, which shall be Buyer's sole remedy for such breach of warranty. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND BUYER WAIVES ALL OTHER WARRANTIES, OBLIGATION OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF SELLER.**

EXCUSABLE DELAY. The Seller shall be excused from delays in delivery and performance of other contractual obligations under the purchase order caused by acts or omissions that are beyond the reasonable control and without the fault or negligence of Seller including but not limited to Government embargoes, blockades, seizure or freeze of assets, delays or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any Government, fires, floods, severe weather conditions, or any other acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, war, material shortages or delays in deliveries to Seller by third parties. If the excusable delay circumstances extend for six months, either party may, at its option, terminate these terms and conditions of sale and the purchase order without penalty or liability and without being deemed in default or in breach thereof.

TITLE RETENTION AND SECURITY INTEREST. Seller retains title to the equipment until the Buyer performs all its obligations under this Agreement. Seller retains and Buyer grants a security interest in the equipment to secure performance of all Buyer's obligations arising under this Agreement. At the request of Seller, Buyer will execute one or more financing statements in a form satisfactory to Seller.

INSURANCE. Buyer shall maintain and carry liability insurance which includes but is not limited to commercial general liability (including product liability and for services to be performed, completed operations liability) in a sum no less than \$5 million, automobile liability in a sum no less than \$5 million, workmen's compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million, with insurance carriers acceptable to Seller. Buyer will, if requested by Seller, furnish certificates of insurance from its carrier(s) on the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Seller from the carrier(s).

SPECIAL TOOLING AND DATA. Unless otherwise agreed in writing, all material, software, data, processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, mold, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of products covered by an order shall be and remain the property of Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished with the products.

TIME OF DELIVERY. Unless otherwise agreed in writing by the Seller, delivery of the Goods shall be made ex-works on a day nominated by the Seller, time not being of the essence, and the Buyer shall be responsible for their prompt collection, transport, off loading and storage. The Seller may, at the Buyer's request, sole risk and expense, arrange carriage of the Goods, in which case the Buyer will be responsible for their prompt off-loading. In all cases, the Buyer shall be responsible for the safe and proper storage of the Goods once they have been delivered. If the Buyer is not able for any reason promptly to accept delivery of the Goods or the Seller exercises its right to withhold delivery of the Goods due to Buyer's financial condition or failure to timely pay Seller, the Seller may, at its discretion and as appropriate, charge the Buyer for any delay in collection or transport or off-loading of the Goods and for their storage and may present its invoice to the Buyer for payment.

Any delivery dates notified to the Buyer by the Seller are given by the Seller in good faith, but are business estimates only and the Seller will not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Seller's failure to comply with them for whatever reason. The Seller may at its own discretion make delivery of the goods by installments. Each installment shall be treated as the subject of a separate contract upon these terms and conditions and the Seller may invoice for each installment separately.

LIMITATION OF LIABILITY. The sole exclusive remedies of Buyer are those specifically set forth herein Seller's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under any Agreement with Buyer, including any warranty set forth herein, whether resulting from breach of contract, breach of warranty, tort, products liability, negligence or otherwise, shall not exceed the aggregate purchase price of the particular goods and services which are the subject of the claim. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR LOSS OF BUSINESS, LOST PROFITS, OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

INTELLECTUAL PROPERTY INDEMNITY. Except insofar as a purchase order calls for products pursuant to Buyer's designs, drawings or specifications, Seller agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any commercial products manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any United States patent which has issued at date of contract, and Buyer's reasonable costs and expenses in defense of such suit if Seller does not undertake the defense thereof, provided Seller is promptly notified of the threat or commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof. Seller's indemnity shall not apply where infringement would not have occurred from the normal use for which the products were designed. Seller's liability for damages hereunder is limited to those computed solely on the value of any products sold to Buyer.

In no event shall Seller be liable for consequential damages or costs applicable thereto. Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Seller based upon a claim of infringement resulting solely from the Buyer combining any product furnished hereunder with any item not manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. In the event any product to be furnished under the purchase order is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller's obligation to Buyer as above. The rights and obligations above are in lieu of any other indemnity or warranty, express or implied.

EXPORT CONTROL. The products or information covered by this agreement may be subject to export regulations of the U.S. Government. Buyer will not export, re-export, resell, transfer or disclose, directly or indirectly, any product, technical data or software obtained hereunder outside the U.S. without (i) complying with applicable export control laws, (ii) notifying and obtaining written permission of Seller, and (iii) providing such reasonable assurances as Seller may request.

SOFTWARE LICENSE. In the event that any software or software documentation is provided to Buyer by Seller in any form whatsoever under a purchase order and no software license agreement governing this transfer has been signed between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder. Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, nontransferable license to use the software or software documentation provided herein:

(i) in the course of the normal operation in or with Seller products, (ii) on Seller or non-Seller products that are used to test, maintain, download, or process information compiled by Seller products. All title and ownership of such software and software documentation, including, without limitation, the copyrights thereto, shall remain exclusively with Seller. Buyer shall not itself, or with the assistance of others, decompile, reverse engineer, or in any other manner attempt to decipher in whole or in part the logic or coherence of any software or software documentation licensed hereunder. Third party software provided by Seller may be subject to a separate license agreement and limitations on copying and use.

TAXES. The prices quoted herein do not include sums necessary to cover any taxes or duties including but not limited to Federal, State, municipal excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of goods or furnishing of services hereunder. Any taxes or duties that are due and owing hereunder shall be paid by the Buyer.

RISK OF LOSS. Unless otherwise agreed to in writing, all risk of loss, theft, or damage from any cause whatsoever, shall be on the Buyer and its insurers, if any, after the delivery by Seller to the carrier at F.O.B. point.

INSOLVENCY/BANKRUPTCY/FINANCIAL DEFAULT. If the Buyer fails to pay any sum due to Seller hereunder, or shall fail to satisfy any of its obligations hereunder and such default shall continue for ten (10) days after the sending by Seller to the Buyer by a registered letter advising of such default, or if the Buyer by the subject of any proceedings under bankruptcy laws or other insolvency laws or be declared subject to judicial supervision or enter into liquidation, Seller shall have the right to immediately repossess the equipment and to terminate this Agreement.

SETOFF. All amounts that Buyer owes Seller under an order shall be due and payable according to the terms of such order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or unites under other transactions with Seller, its parents, affiliates, subsidiaries or other divisions or units.

INDEMNITY. Buyer will indemnify, hold harmless and defend Seller from and against any claims, suits, judgments, expenses or liabilities of any nature (including without limitation all reasonable attorneys' fees) which are threatened or brought against, or are incurred by, Seller arising from any actions, omissions or misrepresentations of Buyer in the use, promotion, or sale of products or services provided by Seller under this sale.

DISPUTE RESOLUTION FOR CONTRACTS WITH NON-U.S. ENTITIES. If either party to this Contract is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration as in force at the commencement of the arbitration. The arbitration shall be conducted by a sole arbitrator that is appointed by the ICC in Accordance with its Rules. The place of arbitration shall be Geneva, Switzerland. Any arbitral tribunal constituted pursuant to this agreement shall apply the law of England to all disputes.

The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. The parties acknowledge that this Agreement and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

DISPUTE RESOLUTION FOR CONTRACTS WITH U.S. ENTITIES. If both parties to this Contract are U.S. entities, any controversy or claim arising out of or relating to this Agreement or its breach shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. The arbitration shall be conducted by a sole arbitrator that is appointed by the AAA in Accordance with its Rules. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder. The arbitrator(s) shall permit each of the parties to the Arbitration to engage in a reasonable amount of discovery. In the event either party requests arbitration, the arbitration shall be held in Charlotte, North Carolina. The award by the arbitrator or arbitrators shall be final, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights.

APPLICABLE LAW. Except for agreements with non-U.S. entities, this agreement shall be interpreted in accordance with the laws of the State of New York, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

COST OF COLLECTION AND ATTORNEYS FEES. In the event any action is taken by Seller to collect amounts billed to Buyer by Seller, Buyer shall be liable for all costs and expenses incurred by Seller in relation thereto, including legal fees.