

Terms and Conditions of Sale

1. ACCEPTANCE

These Terms and Conditions of Sale ("Agreement") apply to all offers made and orders accepted by Irvine Sensors Corporation ("Irvine Sensors"). Acceptance of your ("Buyer's") order is expressly conditioned upon Buyer's assent to the terms and conditions herein, excluding all other terms and conditions. Any change to this Agreement must specifically be agreed to in writing by an authorized representative of Irvine Sensors.

Some of the terms set out here may differ from those in Buyer's order or offer, and some may be new. Irvine Sensors failure to object to provisions contained in any communication from you ("Buyer") will not be deemed a waiver of the provisions of this Agreement.

Buyer's failure to reject this Agreement within ten (10) days after receipt, or upon Buyer's receipt of the goods or acceptance of the service, whichever occurs first, will be deemed Buyer's unconditional acceptance of the terms and conditions herein.

2. CREDIT APPROVAL AND PAYMENT

Credit terms, shipments, deliveries, and performance of work are at all times subject to the approval of Irvine Sensors credit department. Irvine Sensors may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or satisfactory credit terms and security. In the event of Buyer's bankruptcy or insolvency, Irvine Sensors will be entitled to terminate any order then outstanding and to receive reimbursement for Termination under this Agreement.

Unless otherwise noted, payment terms for orders are net 30 days from date of invoices. International orders may require an irrevocable letter of credit confirmed with Irvine Sensors bank.

Each shipment is a separate and independent transaction and payment must be made accordingly.

If Buyer delays a shipment, payments will be due on the date when Irvine Sensors is prepared to make the shipment. If Buyer delays the work covered by the purchase order, payments will be made based on the purchase price and the percentage of completion. Goods held for Buyer by Irvine Sensors are at the risk and expense of Buyer.

3. TAXES

The amount of any present or future sales, use, excise, import duty, or other tax applicable to the manufacture and sale or lease of the goods covered by this order will be added to the purchase price and must be paid by Buyer, unless the Buyer provides Irvine Sensors with a tax exemption certificate acceptable to the taxing authority.

4. SHIPPING TERMS AND RISK OF LOSS

All domestic sales by Irvine Sensors are FOB Irvine Sensors facility, as defined in the Uniform Commercial Code.

All international sales by Irvine Sensors are Ex Works (EXW) Irvine Sensors, as defined by INCOTERMS 2000.

5. TOOLING

Unless otherwise provided by special written agreement signed by Irvine Sensors and Buyer, all equipment, tools, and designs produced, acquired, or used by Irvine Sensors for the purposes of filling Buyer's order remains the property of Irvine Sensors.

6. PACKING, PACKAGING, INSPECTION, TESTS, AND RETURN AUTHORIZATIONS

Irvine Sensors provides normal commercial packing, packaging, and testing at the quoted prices. Any additional requirements, including without limitation Buyer's source inspection, are at Buyer's expense. The goods under this Agreement are furnished with commercial inspection standards at the place of manufacture. If Irvine Sensors and Buyer agree that Buyer is to inspect or provide for inspection at the place of manufacture, that inspection may not interfere unreasonably with Irvine Sensors operations, and the Buyer's approval or rejection must be made before shipment of the goods.

Buyer will promptly notify Irvine Sensors of nonconformance(s) in the goods and afford Irvine Sensors a reasonable opportunity to inspect the goods. No goods may be returned without Irvine Sensors written authorization.

Failure to follow Irvine Sensors return procedures could result in lost goods, delays, additional service charges, warranty denial, or refusal of a shipment. All goods returned to Irvine Sensors must be clearly identified with a return authorization (RA) number, which Irvine Sensors will assign in writing once it determines that the goods should be returned for evaluation or repair. The RA number must appear on the shipping label and all paperwork associated with the return. Irvine Sensors will reject goods returned without the correct RA number clearly marked on the outside of the shipping container.

Granting a return authorization does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without fee.

If after evaluation it is determined that the goods are not covered by warranty, including without limitation when Irvine Sensors determines that the goods were damaged after delivery, a purchase order funding Irvine Sensors usual evaluation fee must be received before further action is taken by Irvine Sensors. In those circumstances, Irvine Sensors reserves the right to dispose of the goods when the Buyer does not promptly pay the evaluation fee.

7. EXPORT COMPLIANCE: FOREIGN CORRUPT PRACTICES ACT (FCPA)

For any resale, export, or re-export of the goods, Buyer must comply with all applicable export regulations, export licensing requirements, and the U. S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd1 through 78dd3.

8. DELIVERY AND FORCE MAJEURE

Shipping dates are approximate and require prompt receipt of all necessary information from Buyer. If conditions arise which delay delivery, Irvine Sensors will notify Buyer and Irvine Sensors will not be liable for any damages, re-procurement costs, or penalties. Without limiting the generality of the foregoing, Irvine Sensors will not be liable for delays due to weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Irvine Sensors. In the event of delay, the date(s) of delivery will be deferred for a period that accounts for the time lost by reason of the delay. If such excusable delay under Force Majeure continues for more than six (6) months, Irvine Sensors and Buyer each will have the option of canceling the affected Purchase orders. Cancelled purchase orders will be terminated following the terms of this Agreement.

In the event Irvine Sensors production is curtailed for any of the above reasons so that Irvine Sensors does not deliver the full amount released hereunder, Irvine Sensors may allocate production deliveries among its various customers then under contract for similar goods. The allocation will be made in a commercially fair and reasonable manner. When allocation has been made, Buyer will be notified of the estimated quota made available.

9. TERMINATION & CHANGE ORDERS

Buyer may request to terminate the order for convenience in whole or in part and Irvine Sensors agrees to cooperate with Buyer in attempting to make such arrangements subject to Buyer paying Irvine Sensors for deliveries made, full direct and indirect costs, settlements with suppliers, related administrative, accounting, and legal costs, plus a normal profit.

All change order requests must be submitted by the Buyer in writing and will not be effective unless Irvine Sensors consents in writing to the change. If any change causes an increase or decrease in the cost of, or in the time required for, performance of an order, an equitable adjustment will be made in the order's price, terms, and delivery schedule.

Irvine Sensors will recognize Buyer's written one-time request to stop production for a maximum of forty-five (45) days. The delivery schedule must be modified in writing to account for the production stoppage, and an equitable adjustment will be made in the price if Irvine Sensors costs allocable to the performance of any part of the order increase as a result of the Buyer's request to stop production.

10. LIMITED WARRANTY; HARDWARE

Irvine Sensors warrants that its goods will be free from defects in material and workmanship for a period of twelve (12) months from the date of original delivery. In the event that Buyer identifies any defects in material or workmanship, Buyer will promptly notify Irvine Sensors in writing of the defective goods and the specific nature of the defect.

Irvine Sensors at its sole discretion will repair or replace any such goods found by Irvine Sensors to be defective after authorized return by Buyer. Buyer will return defective goods, transportation and insurance prepaid, in accordance with instructions issued by Irvine Sensors. Irvine Sensors warranty does not apply to any goods that have been subjected to improper installation, misuse, alteration, repair, neglect, accident, inundation, fire, or the like.

THE WARRANTIES EXPRESSLY SET FORTH HEREIN, INCLUDING REMEDIES, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS INTENDED OR GIVEN.

IN THE CASE OF GOODS OTHER THAN THOSE OF IRVINE SENSORS OWN MANUFACTURE, IRVINE SENSORS MAKES NO WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FREEDOM FROM PATENT INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. SUCH GOODS MAY BE WARRANTED BY THE ORIGINAL MANUFACTURER OF SUCH GOODS.

11. INDEMNIFICATION

Each party hereto will hold harmless and indemnify the other party against all claims, judgments, costs and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing goods are manufactured, sold, and used in whole or in part to the indemnifying party's specifications.

To the extent that one party's employees or agents enter on the property owned or controlled by the other party, the first party will hold harmless the other party, its officers, directors, and employees for any property damage or personal injury or death caused by the first party's employees or agents.

In all cases, Buyer will hold harmless and indemnify Irvine Sensors against all claims, judgments, costs and fees, including attorney fees relating to actions initiated and claims made by third parties for property damage and personal injuries, including death, when any product made pursuant to this Agreement is manufactured in whole or in part to Buyer's designs. Provided, however, such indemnification and hold harmless shall not apply in those instances where the product defect is caused solely by a manufacturing process, assembly operation or the negligence of Irvine Sensors.

12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ORDER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES, OR ANY DAMAGE DEEMED TO BE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS CONTRACT, WHETHER BASED UPON BREACH OF THE CONTRACT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IRVINE SENSORS' TOTAL LIABILITY INCLUDING BUT NOT LIMITED TO LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS WILL NOT EXCEED THE AMOUNT PAID TO IRVINE SENSORS UNDER THIS ORDER AND BUYER AGREES TO INDEMNIFY IRVINE SENSORS FOR ANY AMOUNTS IN EXCESS THEREOF. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) OF THIS CONTRACT, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION.

13. ARBITRATION AND LAW

Disputes which arise under this order and which cannot be settled amicably by the parties hereto will be settled by arbitration in Orange County, California in the United States of America under the prevailing rules of the commercial conciliation and arbitration rules of the American Arbitration Association. Judgment upon the arbitration award or decision may be entered in any court having competent jurisdiction thereof. Arbitration awards and decisions are subject to the Limitation of Liability set forth in this Agreement. The laws of the State of California excluding its conflicts of laws provisions govern the interpretation and enforcement of this contract.

14. UNENFORCEABLE PROVISIONS

In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision which lawfully enforces the parties' intention underlying the invalid or unenforceable provision.

15. FEDERAL ACQUISITION REGULATIONS (FAR)

Irvine Sensors will comply with the FAR clauses required for subcontracts by FAR Part 12.

16. WHOLE AGREEMENT; AMENDMENT

This document constitutes the entire understanding between the parties, and it supersedes all previous or additional agreements, arrangements and drafts relating hereto. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties to this Agreement in writing.