

## **1. APPLICABLE TERMS AND CONDITIONS**

The acknowledgment of this order by Amphenol PCD ("the Seller") or commencement of any performance by the Seller pursuant to this order shall constitute Purchaser's acceptance of the Seller's terms and conditions and the prices set forth herein, and this order is expressly conditioned upon the applicability of Seller's terms and conditions exclusively. No terms or conditions stated by the Purchaser shall be binding on the Seller unless such terms or conditions are expressly accepted in writing by the Seller. The failure of the Seller to specifically object to any or all the terms and conditions set forth herein and the Purchaser, upon the acknowledgment of the quotation or upon Seller's commencement of performance hereunder, shall be deemed to have withdrawn any such terms and conditions that conflict with, are inconsistent with, or are in addition to the terms and conditions set forth herein.

## **2. CHANGES**

The Purchaser may, at any time, in writing, make changes within the general scope of this order in the drawings, designs, specifications, shipping or packing instructions of place or delivery. If any such changes cause an increase or decrease in the cost of or the time required for performance of any such purchase order affected by such change an equitable adjustment in the price, the delivery schedule or both shall be made and such order shall be modified accordingly.

## **3. WARRANTY**

A. SELLER warrants to original Purchaser for one year from date of shipment that products manufactured by SELLER will be free of defects in workmanship and materials and will substantially conform to product specifications.

B. During the warranty period, SELLER, at no charge to Customer, will service, adjust, or replace any nonconforming part(s) returned under this warranty.

C. SELLER shall not be obligated or liable under this warranty for apparent defects which examination discloses are due to tampering misuse, neglect, improper storage, normal wear and all cases where the products are disassembled by other than authorized SELLER Representatives. In addition, SELLER shall not be obligated or liable under this warranty unless the date of delivery to the first end user shall be within six (6) months from the date of delivery to the original Purchaser.

D. Products of warranty consideration shall be returned with all transportation charges prepaid to SELLER in shipping containers which are adequate to prevent loss or damage in shipment. Products repaired or replaced under this warranty are warranted for the unexpired portion of the original warranty.

E. Seller shall not be liable for consequential, incidental or other type of damages and expressly excludes and disclaims such damages resulting from or caused by the use, operation, failure, malfunction or defects of any products sold to the Purchaser under any order, resulting from this quotation, it being understood that the products sold to the Purchaser are not consumer products.

F. SELLER disclaims any liability whether under this warranty or otherwise for any failure of its product which is caused by, in whole or in part, the use in or with that product of component parts not manufactured by SELLER.

G. The terms of applicable warranty or warranties, as the case may be, as set forth above, are the sole and exclusive warranty terms that shall have any force and effect in this order, resulting from this quotation, and such terms and in lieu of all other warranties, expressed or implied; including the implied warranties of merchantability and fitness for a particular purpose which are herewith expressly excluded.

## **4. LIMITATION ON SELLER LIABILITY**

A. With respect to each specific product part number sold hereunder, Seller's liability for all claims, whether based on breach of contract, negligence, product liability, indemnity, or otherwise, relating to such part number shall not exceed twenty-five percent (25%) of the price paid by Purchaser for such part number in the twelve (12) month period preceding the event which gave rise to the most recent such claim.

B. Without limiting the generality of the foregoing, with respect to each order, Seller's liability under such order shall be limited to the total price of products purchased by the Purchaser pursuant to such order.

## **5. SHIPMENT**

Shipments generally will be accomplished FOB Seller's plant. Notwithstanding this, if Seller prepays the transportation charges, Purchaser will be obligated to reimburse Seller upon receipt of invoice for the prepaid transportation charges. Any

special or abnormal packaging required will be included in the unit price of the item to be delivered or as a separate line item. Title to Products and risk of loss and damage will pass to Customer upon shipment from SELLER's designated factory.

## **6. ORDERS**

A. Customer may not cancel or reschedule orders for Products prior to shipment without prior approval from SELLER and as such may be subject to cancellation and rescheduling charges. All product returns may be subject to return charges.

B. Any changes to delivery dates or configurations after the initial order period for products that require customer specific configurations may require a revised quotation and or price change.

## **7. QUANTITIES**

Unless Seller otherwise specifically agrees in writing, Seller reserves the right to over or under ship the quantities shown on the face hereof by 5%.

## **8. DELIVERY**

Delivery will be accomplished within the time specified on the face of this quotation or if no time is specified within the normal lead time necessary for the Seller to deliver the products in question. Anything to the contrary notwithstanding, the Seller shall not be liable for any reasonable delay in production or delivery. In the event a delay in production or delivery occurs beyond a reasonable period of time, which delay is occasioned by fire, strikes, civil or military authority, war, hostility, riots, government action, energy crises, the failure of Seller's suppliers to make timely delivery of material or components, or where such delay is occasioned by other causes beyond the control of the Seller or without its fault or negligence, then the date or dates for delivery of the equipment shall be extended for a period equal to the time lost by reason of any such delay.

## **9. PAYMENTS**

A. Payment terms are subject to SELLER credit approval. Unless otherwise indicated in the quotation or separate written agreement of the Customer and SELLER, payment for Products is due net 30 days from SELLER's invoice date. SELLER may change credit or payment terms at any time should Customer's financial condition or previous payment records so warrant.

B. If payment is not received in accordance with the payment terms set forth in a) above, then SELLER, at its sole option, may assess a late payment fee from the date of tender on a month-to-month basis at a rate of 1.5% per month, compounded monthly, or the maximum permitted by law, if less.

C. SELLER may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other SELLER agreement if, after 10 days written notice, the failure has not been cured.

D. Seller reserves the right to invoice separately for partial shipments.

## **10. PRICES**

The total price for the Products is the amount indicated on the SELLER quotation or signed agreement. Prices are valid for the period indicated on the quotation or signed agreement. Payment shall be made in U.S. Dollars and sent to the remittance account indicated on the invoice; by check, wire transfer, or, if required by SELLER, letter of credit. Prices exclude any sales, value added or similar tax which will be payable by Customer in addition to the purchase price. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

## **11. MATERIAL SHORTAGES AND ALLOCATIONS**

In the event Seller is unable to obtain in a timely manner material sufficient to fulfill all of its orders on hand, the Seller shall have the right as a result of said material shortages to equitably allocate lesser quantities of the products to be delivered to all Purchasers on a proportionate basis and the contract price shall be equitably adjusted, taking into consideration, among other things, the reduced quantity of items to be delivered and the increased production costs, if any, to Seller as a result of manufacturing lesser quantities than anticipated.

## **12. INSPECTION**

In the event the products herein are subject to source inspection requirements, the products must be inspected within 48 hours of Seller's notification to buyer. If inspection does not occur within 48 hours, the products will deemed to have been accepted by buyer. In the event the products do not meet the drawings, designs and/or specifications, the Purchaser shall

notify the Seller of such noncompliance in writing and give the Seller a reasonable opportunity to correct any such noncompliance. The Purchasers shall be deemed to have accepted any product delivered hereunder and to have waived any such noncompliance in the event a written notification that the products delivered hereunder do not comply with the drawings, designs and or specifications, is not received by the Seller within fifteen days after the Purchaser takes custody of the products delivered hereunder.

Where materials are furnished by Buyer it will be assumed that they have been pre-inspected by Buyer and any such material or supplies found defective by Seller at any time during operations under this order will be charged back to Buyer. Seller will charge for work performed on such defective material or in its use.

### **13. INSOLVENCY**

Seller may cancel the whole or any part of an order resulting from this quotation in the event of the suspension of Purchaser's business, insolvency of Purchaser, the institution, by Purchaser or others, of bankruptcy, reorganization, arrangement of liquidation proceedings involving or affecting the Purchaser, or any assignment for the benefit of creditors of Purchaser or receivership that Purchaser places itself in or may be placed in. Such cancellation shall be deemed a cancellation for default of Purchaser.

### **14. PATENT, TRADEMARK AND COPYRIGHT INDEMNIT**

Seller shall indemnify Buyer from any and all damages and costs finally awarded for infringement of any United States patent trademark or copyright in any suit by reason of the sale of any product sold to Buyer hereunder where Seller is an infringer with respect to its sale hereunder, and from reasonable expenses incurred by Buyer in defense of such suit if Seller does not undertake the defense thereof, provided that Seller is promptly notified of any such suit and except for suits against the United States Government. Buyer offers Seller full and exclusive control of the defense of such suit when products of Seller only are involved therein and the right to participate in the defense of such suit when products other than those of Seller are also involved therein; except that, this indemnity shall not extend to infringement resulting from Seller's compliance with Buyer's designs, processes or formulas. Seller's liability for damages hereunder is limited to those computed solely on the value of any product sold to Buyer hereunder. In no event shall Seller be liable for consequential damages or costs applicable thereto. Seller shall also indemnify Buyer's customers and agents for such infringement, if and to the extent that Buyer has agreed so to indemnify them, but to no greater extent than Seller has indemnified Buyer herein and under the same conditions set forth herein. The above is in lieu of any other indemnity or warranty, express or implied, with respect to patent trademarks or copyrights.

### **15. SPECIAL TOOLING**

Title to dies, tools, jigs, fixtures, patterns or any other type of special tooling shall remain vested in the Seller, whether or not paid for or amortized over the products manufactured hereunder to the Purchaser.

### **16. NON-RECURRING CHARGES**

Non-recurring engineering and tooling charges shall be subject to an upward adjustment limited to 10% to be determined after actual expense is incurred.

### **17. TAXES**

Unless otherwise specifically designated on the face page of this quotation, 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, sale, distribution, or delivery of equipment or furnishing of services hereunder. Any taxes or duties that are due and owing hereunder shall be paid by the Purchaser. Accordingly, Seller reserves the right to revise its quotation after the execution of this contract between the parties to include any and all taxes or duties that may become due hereunder and Seller may invoice Purchaser for said additional amount. This clause shall survive the acceptance and complete performance of any purchase order resulting from this quotation by the parties herein.

### **18. SURCHARGE ADJUSTMENTS**

Seller reserves right to invoice buyer in form of a surcharge for abnormal changes in market conditions for precious metals (i.e. gold, silver, rhodium), raw material allocations, fuel charges, or any abnormal currency exchange rates associated to purchased items.

### **19. SERVICEABILITY**

If any provision of this quotation is in violation of any Federal, State or local statute or regulations, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions.

**20. APPLICABLE LAW**

This order (or quote) is subject to the laws and regulations applicable in the state of Massachusetts, U.S.A. Seller represents that with respect to the production of goods and services we have fully complied with the Fair Labor Standards Act of 1938 as amended.

**21. NON-CANCELLABLE AND NON-RETURNABLE:**

Unless otherwise expressly agreed to in writing by Seller, all items purchased shall be considered Non-cancellable and Non-returnable (NCNR). Customers are reminded that they are solely responsible for confirming that all products are properly installed and used in accordance with applicable codes and regulations.

**22. GENERAL**

A. FORCE MAJEURE: Seller shall not be liable for delays in or failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God or public enemy, acts of government in either its sovereign or contractual capacity, acts of Buyer, fire, flood, earthquake or other natural disaster, strike or other labor disputes, acts of war, sabotage, insurrection rebellion, or other acts of civil disobedience, failure of subcontractor to supply material, failure to delay in transportation, or equipment breakdown, nor shall Seller be liable for any reasonable delay in production or delivery. In the event of delay due to such causes, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

B. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.

C. A Customer who exports, re-exports or imports products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. SELLER may suspend performance if Customer is in violation of applicable laws or regulations.

D. Neither party's failure to exercise any of its rights under these Terms and Conditions will be deemed a waiver or forfeiture of those rights.

E. To the extent that any provision of these Terms and Conditions is determined to be illegal or unenforceable, the remainder of these Terms and Conditions will remain in full force and effect.

F. Except for any overriding and currently effective Purchase Agreements, Master Sales Agreements, or Long-Term Contract Agreements, these Terms and Conditions constitute the entire agreement between SELLER and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply without written agreement from SELLER. Customer's submission of a purchase order is deemed an acceptance of these Terms and Conditions, without modifications. In the event of a discrepancy between these Terms and Conditions and a Customer purchase order, these terms shall govern.