

# **SELLER'S TERMS AND CONDITIONS OF QUOTATION/SALE**

**(REV. 12/09)**

**NOROTOS, INC. ("Seller") quotation and/or acceptance of Buyer's Order for Seller's Products and Services is expressly conditioned upon Buyer's assent to the below Terms and Conditions. Buyer's acceptance of Seller's Products is also deemed by the parties to be Buyer's assent to such terms.**

1. **GENERAL**

All Terms and Conditions of Quotation/Sale are as follows except as specifically noted on the face of Seller's acknowledgment or quotation.

2. **DELIVERY, DELAYS AND PERFORMANCE**

No liability shall result from delay in performance or non-performance of this Agreement directly or indirectly caused by fire, explosion, accidents, flood, labor trouble or shortage, war, act of regulation of any government, inability to obtain suitable material, equipment, fuel, power or transportation or act of God; or arising from contingencies, happenings, or causes beyond the control of the parties affected. Quantities of Products so affected by any such circumstances may be eliminated from an Order without liability, but this Agreement shall otherwise remain unaffected.

3. **F.O.B. POINT**

All sales are made for U.S. Buyers F.O.B. at Seller's factory, Santa Ana, CA. U.S.A. Seller's liability ceases as to delivery and risk of loss ceases upon making delivery of the Products purchased hereunder to carrier at said shipping point in good condition; the carrier acting as Buyer's agent.

4. **ASSIGNMENT**

The Buyer shall not assign its Order or any interest therein or any rights thereunder without the prior written consent of Seller.

5. **TAXES**

Buyer shall reimburse the Seller for all taxes, excises or other charges which the Seller may be required to pay to any domestic government (national, state or local) upon the sale, production or transportation of the Products sold hereunder, and for international operations (export sales). Additionally all taxes, licenses, duties, and governmental exactions by whatever name known which may be levied or assessed on or account of the Products sold hereunder, or their documents.

6. **PAYMENTS**

Payments shall be made to Seller NET 30 days after delivery to Buyer. Each shipment shall be considered a separate and independent transaction. If performance by Seller or shipments are delayed by the Buyer, payments shall become due on the date when the Seller is prepared to make shipment and such payments shall be made based on the purchase price and the percentage of completion. The Seller reserves the right to ship its Products and make collection by sight draft with Bill of Lading attached.

7. **PRICE**

Prices and terms are not subject to verbal changes or other agreements unless approved in writing by Seller. Prices are based on costs and conditions existing on the date of

quotation and are subject to change by the Seller before final acceptance. Prices do not include export or special packaging, compliance testing, or inspection charges. Buyer shall have no right to access of Seller's cost or pricing data or other book and records.

8. **NON-WAIVER-CONFLICTING TERMS AND CONDITIONS**

Any failure at any time of Buyer or Seller to enforce any provision hereof shall not constitute a waiver of such provision nor prejudice the right of Buyer or Seller to enforce such provisions at any subsequent time. Insofar as any terms and conditions of the Buyer's Order conflict with the Seller's terms and conditions contained herein, the latter shall govern, irrespective of whether the Buyer accepts the Seller's terms and conditions by a written acknowledgment, by implication, or acceptance and payment of Products ordered hereunder. Terms and conditions proposed by Buyer that are inconsistent with those stated herein are waived by Buyer.

9. **PROPRIETARY RIGHTS**

Any of Seller's data and its Products furnished or acquired by Buyer providing confidential or proprietary information concerning Seller's trade secrets, such as, but not limited to, any formula, design, engineering drawings, device or compilation of information, including Seller's manufacturing methods or processes, treatment and chemical composition of materials and tooling shall be kept confidential by Buyer, and not disclosed to third parties without Seller's express written permission. And, Buyer shall not use such data, in whole or in part, or the Products, to copy, redesign, reverse engineer, replicate or manufacture (or enable manufacture by itself or any third party) the Products, products similar thereto or products derived therefrom without Seller's express written permission. The Price for the Products does not include any such data and information.

10. **PATENT DATA**

Seller warrants that the use or sale of its Products will not infringe the claims of any United States patent governing the Products themselves for a period of twelve months after the Products are delivered to Buyer. Seller does not warrant against patent infringement by reason of the use of its Products in combination with others or in the operation of any process. Buyer assumes liability for patent and copyright infringement when Products are made to Buyer's specifications. Buyer shall indemnify and hold Seller harmless from all damages and costs related to such infringement.

All technical advice, specification data, recommendations and services are rendered by the Seller free of charge and while based on data believed to be reliable, they are intended for use by skilled persons at their own risk. Seller assumes no responsibility to buyer for events resulting or

damages incurred from improper use. They are not to be taken as a license to operate under or intended to suggest infringement of any existing patent.

11. **DISPUTES/COLLECTION**

Should Seller initiate collection (in court or otherwise) against the Buyer by reason of Buyer's failure to make payment in accordance with Seller's payment terms or other disputed contract interpretation or to enforce this agreement, then the prevailing Party in such action shall be paid all costs (including its reasonable attorney's fees) actually incurred in connection with such action, or any appeal therefrom, from the other Party regardless of any otherwise applicable court schedule used in connection with the determination thereof. In any such action the laws of the State of California, U.S.A. shall apply, except for its internal conflict of laws provisions. This contract excludes the application of the 1980 United Nations Convention for the International Sale of Goods. Any dispute between Buyer and Seller may be brought in any competent jurisdiction.

12. **ACCEPTANCE**

Final acceptance or rejection of the Products shall be made as promptly as practical after delivery to Buyer; however, unless earlier rejected, the Products shall be deemed by the parties to be accepted within sixty (60) days after delivery to Buyer. Upon acceptance of each unit of Products, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Any defect or nonconformance becoming apparent in the Products after such acceptance shall be corrected under and subject to, the conditions of the Term herein entitled Warranty.

13. **CHANGES**

Buyer may make changes upon 30 days notice within the general scope of this agreement in (a) drawings, designs or specifications, (b) place of delivery, and (c) method of shipment or packing of the Products. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such Order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly.

Any claim by the Seller for adjustment under this Article must be asserted within thirty days from the date of receipt by the Seller of the notification of a change, provided, however, that Buyer shall act upon and settle any such claim with all reasonable diligence and in good faith after receipt of the Seller's data package substantiating such claim, but not later than three months thereafter; unless at such time the claim shall be subject to additional reasonable interest charge (but not less than 2% plus the prime rate or LIBOR) on the total unpaid claim amount or such other mutually-agreed-to amount. All such claims shall be negotiated by the parties prior to delivery of the Products to Buyer.

Where Buyer requests shipment of Products prior to completion and acceptance of Qualification Testing, Buyer shall be completely responsible for any modification and/or

change costs of such Products. Further, Buyer shall also be responsible for any modification and/or change costs applicable to fabricated parts in Seller's possession until the date that Seller resolves written notification of Qualification Test Approval.

14. **CANCELLATIONS, STOP WORK ORDERS**

Cancellations of an Order will be accepted only with the specified written approval of the Seller and shall be subject to cancellation charges which will include all expenditures made and committed for the Order with a reasonable allowance for prorated overhead expenses, profit and cost for preparing, submitting and negotiation of Seller's termination claim.

15. **WARRANTY**

- (a) Seller warrants all Products to be furnished under an Order to be free from defects due to faulty workmanship or material for the period of twelve months from the date of delivery to Buyer.
- (b) Seller neither expressly nor impliedly warrants against defects in design, workmanship and material of parts or materials supplied by others and utilized by Seller in such Products. Seller shall give to Buyer (insofar as it is assignable) the benefits of any express written warranties given to Seller by such manufacturer or other vendors. Seller shall have no obligation to process any warranty claim against such manufacturer and supplier for the benefit of Buyer.
- (c) Seller neither expressly nor impliedly warrants, or makes any representation whatsoever, as to service life of such Products since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller.
- (d) This Warranty shall apply only on the condition that:
  - (1) Buyer delivers written notice of its claim under this clause to Seller within such warranty period, but not later than fifteen days after discovery of the defect which is the basis for its claim;
  - (2) Buyer delivers such Products to Seller at its plant, F.O.B., Santa Ana, CA., U.S.A. within thirty days after such written notice;
  - (3) Seller determines (in its sole discretion) that such Products are defective and have not been subject to accident, abuse or misuse, and have been operated and maintained in accordance with the manufacturer's recommendations and specifications; and
  - (4) The Products have not been the subject of a replication (ie., reverse engineering) program, either formal or informal, sponsored or supported by the U.S. Government or any other entity.
- (e) The obligations and liabilities of Seller under this Warranty are expressly limited to the replacement or the repair by Seller of such Products, and shall not include any removal, disassembly, failure analyzing fault isolation, inspection, retrofit or reinstallation costs incident to such correction or replacement.
- (f) Buyer may effect warranty repairs of the Products at its facility only with Seller's prior written approval. Seller will reimburse Buyer for such repair at labor rates to be mutually agreed upon, but not exceeding Seller's own rates.

(g) Seller will reimburse Buyer for its reasonable transportation costs to return such Products which are confirmed by Seller to be defective under subparagraph (d)(3) above.

(h) THE WARRANTIES PROVIDED IN THIS ARTICLE 15, AND THE

OBLIGATIONS AND LIABILITIES OF SELLER AND THE RIGHTS AND REMEDIES OF BUYER HEREUNDER ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL WARRANTIES AND LIABILITIES OF SELLER AND ALL CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN ANY PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY (A) IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, (C) RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE, AND (D) ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY SELLER AND BUYER. IN THE EVENT THAT ANY PROVISION HEREOF SHOULD FOR ANY REASON BE HELD INEFFECTIVE, THE REMAINDER OF THIS WARRANTY SHALL REMAIN IN FULL FORCE AND EFFECT.

16. **EXTENT OF SELLER'S LIABILITY**

Seller will not have any liability for liquidated damages, penalties, fees, or for collateral, indirect, incidental, consequential or special damages, including loss of profits or loss of use,

and the aggregate total liability of any damages under an Order shall in no event exceed its contract price of the Product giving rise to the claim (or claims) of liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise. Buyer agrees to indemnify and hold harmless Seller from all claims by third parties which extend beyond the foregoing limitations of Seller's liability.

17. **BUYER-FURNISHED MATERIAL**

When a quotation or Order specifies that material is to be furnished by the Buyer, ample allowances shall be made by the Buyer for reasonable spoilage or scrap of the material so as to facilitate efficient, timely production by Seller.

18. **EXPORT AND IMPORT COMPLIANCE**

Buyer and Seller (hereafter also known collectively as "Parties") shall comply with the laws and regulations of the United States of America (USA) relating to exports and foreign transactions, including, but not limited to, the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Regulation (EAR) (15 C.F.R. Parts 730-774) and the Export Administration Act of 1979, as amended (50 U.S.C. 2401 et. Seq.). In particular, the Parties shall not disclose any technical data, nor deliver, export, re-export or re-transfer any Product out of the USA, or to foreign persons or entities within or outside the USA, without the proper written authorization and/or license from the U.S. Government. Buyer hereby indemnifies and agrees to hold Seller harmless from any costs, damages, penalties, attorney's fees and similar expenses of Seller due to Buyer's breach (or threatened breach) of such obligation. The Parties shall reasonably cooperate with each other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.