

PACIFIC LASERTEC, LLC TERMS AND CONDITIONS

The following terms and conditions shall apply to the sale of goods or products (“goods” or “products”) associated with this quotation, confirmation or invoice, and more specifically set forth on the face of such referenced documents. “Seller” shall refer to Pacific Lasertec, LLC, and “Buyer” shall refer to the entity designated as such on the face of referenced documents, or “party” for either Pacific Lasertec, LLC or Buyer, or “parties” collectively for Pacific Lasertec, LLC and Buyer.

**1. Representation.** Each party represents and warrants to the other that: (i) such party has the full right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

**1A. Prices: goods.** Pricing for the goods sold hereunder shall be determined by Seller in its sole discretion and may be changed at any time or from time to time by Seller on notice to Buyer. Unless otherwise specified by Seller, prices for such goods are for the quantity specified and do not include charges for transportation, insurance, special packaging, marking, applicable sale service taxes, value added taxes, export or import licenses, fees, taxes, duties and the like; Buyer shall bear the cost of such charges in addition to the prices invoiced. Prices quoted are in U.S. Dollars, and all quotations are firm for and expire thirty (30) days after their issue date. Seller reserves the right to make substitutions and modifications in the specifications of goods sold by it if such substitutions or modifications do not cause a material adverse affect on overall performance. Seller further reserves the right to discontinue any good(s), provided that for any such discontinuance it shall provide written notice of such discontinuance to Buyer at least fifteen (15) days in advance of such discontinuance.

**2. Payment.** Unless payment terms are otherwise agreed, all payments are due in advance of shipment via wire transfer or credit card. Seller may apply any payment received from Buyer against any Buyer’s obligation(s) to Seller under this or any other agreement, regardless of any statement appearing on or referring to such payment, without discharging Buyer’s liability to any additional amounts owed by Buyer to Seller, and Seller’s acceptance of such payment shall not constitute a waiver of Seller’s right to pursue the collection of any remaining balance. Buyer shall pay the entire net amount of each invoice rendered by Seller to Buyer pursuant to the terms of each such invoice without offset or deduction. Payment shall be made in U.S. dollars, and no discounts are authorized. Seller reserves the right to modify credit terms either before or after shipment of goods. Invoices for any amounts not paid by due date will have a per month late fee of 1.5% per month or the maximum allowable by law, whichever is higher, assessed against any unpaid balance from the invoice due date until the date of actual payment, together with Seller’s costs of collection (including reasonable attorney’s fees. If the Buyer fails to make payment when requested by Seller, or if the Buyer is or becomes delinquent in the payment of any sum due Seller (whether or not arising out of this order), then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts for goods previously delivered to the Buyer.

**3. Shipment.** Seller agrees to exercise reasonable business practices to meet the agreed-upon delivery dates for orders from Buyer that are accepted by Seller. Seller reserves the right to ship up to one week in advance of Buyer’s requested delivery date as shown on the applicable order. Goods shall be shipped to Buyer ExWorks (Incoterms 2000) Seller’s manufacturing facility. Buyer understands that shipping dates are dependent on Seller’s prompt receipt of all necessary information from Buyer. Seller shall not be liable for any delays or failure to perform due to causes or events beyond Seller’s control, even if foreseeable by either party, including without limitation supplier’s delay, force majeure, act of God, labor disturbance or strike, war or acts of terrorism, fire, explosion, earthquake, accident, adverse weather, inability to secure transportation, governmental act or regulation, Seller’s inability to obtain materials, shortage of materials or any other causes or events beyond Seller’s control. Without liability to Buyer, Seller reserves the right to (i) allocate among customers or potential customers, or (ii) defer or delay the shipment of goods that are in short supply. Unless specified in writing in the purchase order, Seller shall select the common carrier for shipment of goods, but such common carrier shall not be construed to be Seller’s agent, nor shall Seller assume any liability in connection with such shipment. Goods will be shipped in packaging Seller deems appropriate. If Buyer requests special packaging, Buyer shall assume all costs, responsibility and risk for such packaging. Buyer will pay for all transportation charges and these will be collected upon placing order via wire transfer or credit card, or on delivery, or will be charged directly to the Buyer’s shipping carrier account number. Title and risk of loss or damage to goods shall pass from Seller to Buyer when Seller makes goods available to the common carrier or to Buyer. Shipments may be in installments. Seller’s default or delay in shipping the whole or any part of installment of goods shall not affect any other portion thereof. Buyer may not cancel the purchase, nor reschedule the shipment or delivery of the whole or any part of installment of goods ordered. Buyer shall notify Seller in writing within 30 calendar days of Buyer’s discovery of any breach of this agreement by Seller, and failure to provide such notice to Seller within this specified period constitutes a waiver of such breach.

**4. Warranty.** Except as otherwise provided herein, Seller warrants that goods sold hereunder will be free from defects in material and workmanship for 12 months from the date Seller ships such goods to Buyer (the “Warranty Period”). This warranty is limited to defects arising under normal and intended use and does not cover malfunctions, failures or defects resulting from misuse, abuse, accident, neglect, improper or inadequate maintenance, alteration, modification, improper installation or repairs by any other party other than Seller. Notwithstanding anything else to the contrary, Seller gives no warranty whatsoever for components of goods consigned or sold to Seller by Buyer. The warranty provided is limited to Buyer and may not be assigned in whole or part. EXCEPT AS SET FORTH HEREIN SELLER PROVIDES GOODS WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE. NO REPRESENTATION, ORAL OR WRITTEN, WHETHER MADE BY SELLER’S EMPLOYEES OR OTHERWISE, THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY SELLER FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SELLER. BUYER’S REMEDIES SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF OTHER REMEDIES. Seller’s obligation with respect to claims under this warranty shall be limited, at Seller’s option, either to the replacement of defective or non-conforming goods or to an appropriate credit for the purchase price thereof, subject to and in accordance with Section 5 below.

**5. Returns.** Buyer shall have fifteen (15) days from the date of receipt or possession, whichever is earlier, by Buyer of any shipment or installment shipment of goods to inspect and, where applicable, test, the goods in such shipment or installment for defects and/or non-conformance (the “Inspection Period”). If Buyer determines such goods to be non-conforming within the Inspection Period, Buyer may return such goods subject to

and in accordance with the following return provisions: (1) Buyer shall obtain a Return Material Authorization number (an “RMA”) from Seller for all defective or non-conforming goods before shipping such goods back to Seller. (2) In each and any return shipment, Buyer shall include a written explanation of the reason for Buyer’s return of such goods and the appropriate RMA. (3) All shipping costs related to the return of defective or non-conforming goods to Seller shall be borne by Buyer, and Buyer shall assume all liability and risk of loss of or damage to such goods during shipping. Seller shall pay shipping costs to the location from where the Buyer shipped defective goods to Seller for all authorized repaired or replaced goods, and Buyer shall assume risk of loss of or damage to goods once such goods are delivered to the common carrier. Seller shall return goods that are not defective to Buyer, and Buyer shall pay for shipping costs and assume risk of loss of or damage to such goods during shipping or otherwise. Title to goods returned pursuant to this Section shall remain with Buyer; provided, however, that the title to the defective goods not returned to Buyer shall pass from Buyer to Seller as of the date Seller ships replacement goods to Buyer or Seller credits Buyer for defective goods. Repair or replacement shall not extend beyond the Warranty Period for any such returned and/or replaced goods.

**6. Indemnity Against Infringement.** Except as otherwise provided herein, the indemnifying party (“Indemnifying Party”) shall indemnify, defend and hold harmless the other Party (the “Indemnified Party”) and its subsidiaries from and against (i) causes of action, , litigation, proceedings and the like alleging that the use or sale of goods directly infringes upon or misappropriates any third-party’s patent, trademark, trade secret, copyright, mask work or other intellectual property rights (“IP claims”), and (ii) liens, liabilities, damages, costs, expenses (including reasonable attorney’s fees) and the like arising out of or related to any IP Claim covered under this Section; *provided that* the Indemnified Party promptly notifies the Indemnifying Party in writing of any IP Claim for which indemnity is claimed, allows the Indemnifying Party to assume complete control of the defense and settlement of such claim, and cooperates completely in any such defense. Neither Party shall have any obligation for any settlement entered into without such Party’s prior written consent. The Indemnifying Party shall not have any obligation for or with respect to IP Claims arising out of or related to (i) designs, instructions, specifications or intellectual property not developed by the Indemnifying Party or not furnished by the Indemnifying Party, (ii) components of goods, including without limitation memory semiconductors, consigned or sold to the Indemnifying Party by the Indemnified Party, (iii) the combination of goods with any hardware, products, equipment, materials, text, graphics, software or the like supplied by a party other than the Indemnifying Party, (iv) modification of goods by a party other than the Indemnifying Party, or (v) use of goods in a way not specified in writing by the Indemnifying Party. If Seller is the Indemnifying Party and the use or sale of the allegedly infringing goods is finally enjoined, Seller shall, at its opinion and expense, use commercially reasonable efforts to (i) procure for Buyer the right to use or sell, as applicable, the allegedly infringing goods, (ii) replace or modify the allegedly infringing goods or the affected part thereof with equivalent non-infringing technology, or (iii) refund to Buyer an amount equal to the net price paid by Buyer for such allegedly infringing goods. THE INDEMNITY CONTAINED IN THIS SECTION STATES THE ENTIRE LIABILITY OF EACH PARTY TO THE OTHER WITH RESPECT TO MISAPPROPRIATION OR INFRINGEMENT BY THE GOODS, OR ANY PARTS THEREOF, OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY PARTY AND IS IN LIEU OF WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, IN REGARD THERETO. EACH PARTY’S REMEDIES SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF OTHER REMEDIES INCLUDING WITHOUT LIMITATION INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES. IN NO EVENT SHALL SELLER’S TOTAL LIABILITY TO BUYER EXCEED THE PURCHASE PRICE OF THE ALLEGEDLY INFRINGING GOODS.

**7. Ownership Rights.** Seller’s design, development, material, or manufacture of any good(s) for Buyer shall not be deemed to produce a work made for hire and shall not give a Buyer any intellectual property right interest in any such good or portion thereof. Such rights shall remain Seller’s sole property. All equipment, materials, software and other proprietary information of Seller whether or not made for, obtained or developed by Seller for the performance of this agreement, shall remain Seller’s sole property. Buyer’s payment of any costs or expenses relating to any of the foregoing shall not be deemed to grant Buyer any ownership interest therein. Sales hereunder do not convey any license, expressly or by implication, estoppels, by law, or otherwise under any patent, copyright, mask work or the like with respect to which Seller can grant license covering complete equipment, or any compilation, assembly, combination, method or process in which any such goods are used as components. Seller reserves its rights under such patents, copyrights, mask or the like.

**8. Use of Goods.** Seller’s goods are not designed for and Seller has no desire to enter the life support market or to supply its goods for use in the life support systems, critical care applications, human implantations, nuclear facilities, defense, or systems or any other applications in which product failure could lead to loss of life or catastrophic property damage, or to expose itself to the risk of loss, expense, cost, liability, litigation and/or potential adverse verdict or judgment in relation to any such use of its goods. Accordingly, Seller disclaims liability, and Buyer and Buyer’s customers’ use or sell such goods for use in such applications at their own risk, and Buyer shall indemnify, defend and hold harmless Seller and its subsidiaries from and against (i) claims, demands, actions, litigation, proceedings and the like arising out of or related to such use or sale (“Use Claims”) and (ii) liens, liabilities, damages, costs, expenses (including reasonable attorney’s fees) and the like arising out of or related to any Use Claim. Additionally, Seller shall not reverse engineer, decompile, decompose, test, or analyze, any portion or an entirety of the Seller’s good for any purpose outside of its intended use.

**9. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES BY BUYER. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF USE, PROMOTION OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS) HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY WAS NOTIFIED OR AWARE OF THE POTENTIAL OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, THIS EXCLUSION INCLUDES LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS AGAINST BUYER. SUBJECT TO ANY OTHER LIMITATIONS ON SELLER’S LIABILITY IN THIS AGREEMENT, SELLER’S MAXIMUM LIABILITY, WHETHER RESULTING FROM BREACH OF CONTRACT OR NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE SPECIFIC GOODS AS TO WHICH THE CLAIM IS MADE. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED UNDER ANY TERM OF THIS AGREEMENT. SINCE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, THE LIMITATIONS CONTAINED IN THIS SECTION MAY NOT APPLY TO THE PARTIES.

**10. Confidentiality.** Buyer and Seller each agree to retain in confidence the non-public terms in this Agreement and all other non-public information and know-how disclosed pursuant to this Agreement which is either designated as proprietary and/or confidential, or which by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential (“Confidential Information”). Each party agrees to: (a)

preserve and protect the confidentiality of the other party's Confidential Information; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees as is reasonably required under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees). Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) already publicly known; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party, as shown in records of receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (iv) required to be disclosed by law or court order. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives or any court of competent jurisdiction or any other party empowered hereunder as reasonably required to resolve any dispute between the parties hereto.

11. General. This agreement constitutes the entire understanding between Buyer and Seller with respect to the subject matter hereof and supersedes prior agreements, discussions and understandings between Buyer and Seller relating to the subject matter hereof. This agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not set forth herein. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement, and this agreement shall be construed, enforced and governed in accordance with California state laws without giving effect to its choice of law provisions. The parties agree and submit to the exclusive jurisdiction of the Superior Court of California for the County of Orange or the U.S. District Court for the Southern District of California. If any term or provision of this agreement is held to be invalid or unenforceable, this agreement shall continue in force without such provision or as changed and interpreted to give best effect to the parties' intentions. Laws, regulations, orders or other restrictions on the export from the U.S.A. of any technology, products incorporating technology or information pertaining thereto that may be imposed by the U.S.A. government or any agency thereof apply. Notwithstanding anything else to the contrary, Buyer shall not export or re-export, directly or indirectly, any technology, products incorporating technology or information pertaining thereto to any country for which the U.S. Government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first containing such license or approval or any country categorized under the Generally Embargoed Countries (e.g., U.S. GEC) or restricted by the International Traffic and Arms Regulation or other laws or treaties. Seller shall provide information under its control for Buyer to obtain any import or export licenses required for Buyer to receive or ship goods sold. If goods purchased are sold, or are incorporated into products that are sold, under a U.S. Government contract, Seller rejects provisions or clauses required to be passed on to Seller pursuant to said contract and such provisions or clauses shall not be deemed included or binding on Seller unless accepted in writing by Seller's authorized representative. This agreement may be amended, changed, modified, waived or discharged only by a writing signed by the party against whom enforcement is sought. No delay or omission to exercise any right, power or remedy accruing to any party upon any breach or default of the other party under this agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach or default. Waiver, permit, consent or approval of any kind of character of any breach or default must be in writing signed by the party against whom enforcement is sought. If any dispute arises out of or related to this agreement, the parties shall first try in good faith to settle the dispute by mediation in the County of San Diego, California. Either party may initiate mediation by delivering a written request to the other party. Within 10 calendar days of such request, the parties shall confer to select a mediator. If the parties fail to agree upon a mediator, either party may request that the Judicial Arbitration and Mediation Services (JAMS) appoint a mediator. The prevailing party in any action or proceeding to enforce or interpret this agreement shall be entitled to recover its reasonable expenses including without limitation attorney's fees.