

*Applicable to Sale of Products of*

**BEI PRECISION SYSTEMS & SPACE COMPANY, INC.**

- 1. ACCEPTANCE:** All quotations and proposals covering Seller's products are made, and all contracts or purchase orders for said products are accepted, solely under the terms and conditions set forth herein (the "Agreement"). Any provisions on Buyer's purchase order or other documents issued by Buyer, which are at variance with or in addition to these terms and conditions, are rejected hereby and Buyer's acceptance of the products shall constitute acceptance of this Agreement.

All contracts and orders are subject to approval and acceptance in writing by BEI Precision Systems & Space Company, Inc, 1100 Murphy Drive, Maumelle, AR 72113 ("Seller").

- 2. PRICES:** Prices are net and are not subject to trade or other discounts except those which may be authorized on the face of Seller's invoice, and do not include any federal, state, county, local or other taxes, however designated, or costs of special packaging and insurance. Said charges, when applicable, shall be paid by Buyer. However, Buyer may provide Seller with an appropriate tax exemption certificate acceptable to the taxing authorities. Seller shall be entitled to retroactive recovery of any unearned discounts, which may have been granted to Buyer. Unless requested by Buyer, Seller shall have no obligation to obtain insurance for Buyer. Notwithstanding the prior sentence, Seller reserves the right at its own discretion, unless otherwise requested by Buyer in writing, to obtain insurance for Buyer on a "prepay and add" basis. Seller may obtain insurance at Buyer's expense for any C.O.D. shipments.

Prices are subject to equitable adjustment at any time before delivery should economic factors beyond Seller's reasonable control, such as supplier prices and deliveries or government actions, necessitate such action.

- 3. PAYMENT:** Payment for products and all other charges shall be made in full within thirty (30) days of the date of invoice, unless otherwise specified. If, in the judgment of the Seller, the financial condition of Buyer at any time does not justify shipment on the terms of payment originally specified, Seller may require full or partial payment in advance or may ship C.O.D. In the event of the bankruptcy or insolvency of the Buyer, whether or not under the Federal bankruptcy laws, the Seller may, at its option, refuse delivery except for cash (including payment for all goods thereto delivered), stop delivery of goods in transit, reclaim the goods upon demand, or cancel or resell any order then outstanding and be entitled to reimbursement for all cancellation or resale charges.

The invoiced amount shall not be subject to set-offs for any claims by Buyer against Seller, including any claims for products returned by Buyer for repair or correction of defects. Seller reserves the right to make delivery in installments which shall be separately invoiced and paid for when due without regard to subsequent deliveries. If the invoiced amount or any part thereof is not paid by Buyer when due, Seller hereby reserves the right to assess interest charges at the greater of eighteen percent (18%) per annum or the highest rate allowed by law, on such amounts from the date due until paid, and Buyer agrees to pay such interest charges and all collection and legal fees.

If shipments are delayed by Buyer, payments shall become due on the date Seller is prepared to make shipment. Products held for Buyer shall be at the expense of Buyer.

- 4. WARRANTY:** Seller warrants that all new products sold by Seller shall conform in all material respects in normal use to their specifications for one (1) year from the date of original shipment. During the warranty period Seller will repair, or at Seller's option replace, any product of Seller; provided such product is returned to Seller with shipping prepaid, and is proven defective during the subsequent factory examination. The foregoing warranty shall not apply if the product has been damaged by accident, misuse, or modification. Excluded from the foregoing warranty are (i) fuses and lamps which are subject to effects of transients and overvoltage; and (ii) motor brushes which are subject to wear. The foregoing expresses Buyer's sole and exclusive remedy and Seller's sole liability for any breach of warranty.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, SELLER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

- 5. DELIVERY:** Seller will not incur any liability for any delay in delivery for any reason other than an arbitrary refusal of Seller to perform. Delivery dates furnished by Seller represent the best estimates of the time required to make shipment. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Products will be deemed accepted upon delivery and Buyer hereby waives all right of revocation.

- 6. LIMITATION OF LIABILITY:** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, OR FOR ANY DELAY OR LOSS OF USE (INCLUDING, WITHOUT LIMITATION, LOST REVENUES, COST OF PROCUREMENT OF SUBSTITUTE GOODS, OR LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO PRODUCTS PROVIDED HEREUNDER EXCEED THE AMOUNT PAID BY BUYER FOR THE UNIT OF THE PRODUCT GIVING RISE TO THE CLAIM.

THE LIMITED WARRANTY, LIMITED REMEDIES, WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SELLER AND BUYER. SELLER WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS WITHOUT SUCH LIMITATIONS.

- 7. PROPRIETARY INFORMATION:** Buyer agrees that any data, such as Seller's specifications, drawings, software and other information (including, without limitation, designs, reports, software documentation, manuals, models, process information and the like), disclosed by Seller to Buyer that is marked or identified as "proprietary" or "confidential" or with a similar legend, or that Buyer knew or should have known under the circumstances was considered confidential or proprietary, will be considered the proprietary information of Seller. Buyer shall keep all such information in confidence using at least the same care and safeguards as are applied to Buyer's own proprietary information of a similar nature, but with no less than reasonable care. Such information shall not be duplicated, disclosed to others, or used without the written

permission of Seller. These obligations shall not apply to any information, which is in or comes into the public domain without violation of this agreement, or is received lawfully by Buyer from a third party subsequent to this agreement, or is developed by Buyer independently and without benefit of information received from Seller.

**8. DATA RIGHTS:** Seller reserves and retains all right, title and interest in and to any and all intellectual property and tooling which Seller develops relating to the products provided pursuant to this Agreement including, without limitation: data, inventions, know-how, trade secrets, and copyrightable works. Nothing in this Agreement shall be construed as granting any intellectual property rights relating to the products provided pursuant to this Agreement, except for the rights of use and distribution of the products. All rights not expressly granted to Buyer are reserved to Seller.

**9. PATENT INDEMNITY:** In lieu of any other warranty by Buyer or Seller against patent infringement, statutory or otherwise and subject to the limitation in Section 6, it is agreed that Seller shall defend at its expense any suit against Buyer by a third party to the extent that the action is based on a claim that the products furnished by Seller infringe any United States patent, and Seller shall pay any damages finally awarded in any such suit that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Buyer promptly notifying Seller in writing of the suit, Buyer giving Seller sole control of the defense thereof and any related settlement negotiations, and Buyer cooperating and, at Seller's request and expense, providing information and assistance to Seller in such defense. If the use of said products is enjoined in such suit, Seller shall, at its option, either (i) procure for Buyer or its customer the right to use said products; (ii) replace or modify the product so that it becomes non-infringing; or (iii) refund the purchase price paid by Buyer for such product. Notwithstanding the foregoing, Seller will have no obligation with respect to any infringement claim based on (a) any unauthorized use, reproduction or distribution of the products; (b) any use of the products in combination with other products, equipment, software, or data not supplied by Seller; or (c) any modification of the products by any person other than Seller. THIS SECTION 9 STATES SELLER'S EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT.

Buyer shall indemnify, defend, and hold Seller harmless, under the same terms and conditions applicable to Seller above, against any cost, expense, or loss resulting from or in connection with the use or distribution of the products (specifically excluding infringement claims covered by Seller's indemnity above), or from infringement of any intellectual property rights arising from compliance with Buyer's designs, specifications, or instructions.

**10. PACKAGING AND SHIPMENTS:** Seller's products will be packaged in accordance with standard commercial practices for domestic shipment. Shipping charges will be paid by Buyer. In the absence of specific written instructions, Seller will select the carrier. When applicable, Buyer shall obtain ocean freight space and marine insurance.

**11. DELIVERY, TITLE, AND RISK OF LOSS:** Unless otherwise provided for in advance, all shipments will be made F.O.B. Seller's factory, and upon Seller's delivery of a shipment to the carrier, title and risk of loss shall pass to Buyer. Buyer shall assume the risk of any loss or damage to the shipment thereafter. However, all C.O.D. shipments will be made F.O.B. destination, and title and risk of loss shall remain in Seller until delivery to Buyer.

**12. GOVERNING LAW:** The terms and conditions stated herein shall be governed by and construed in accordance with the laws of the State of Arkansas as such laws apply to contracts between Arkansas residents performed entirely within Arkansas without giving effect to any conflict of law principles that would require the application of the laws of a different state.

**13. COMPLIANCE WITH LAWS: EXPORT** In exercising its rights and performing its obligations under this Agreement, Buyer will comply with all applicable international, national and local laws and regulations including, without limitation, all applicable export and import control laws and regulations. In compliance with United States Export Laws or Regulations as they currently exist and as they from time to time are amended, and notwithstanding any other provision hereof, the buyer agrees that with respect to information derived from or pertaining to, any technical data and product provided it shall not intend to and shall not knowingly export or re-export to any country, entity, or foreign person prohibited from obtaining such information, either directly or indirectly through affiliates, licensees or subsidiaries, any information acquired from the seller, or any products utilizing such information to any countries outside the United States, which export may be in violation of the United States Export Laws or Regulations.

**14. FACILITY ACCESS** The Seller maintains a secure facility for the purposes of national security, export control and the safeguarding of information. Access to seller's facilities and information must be authorized and approved by seller in advance. BEI Precision Systems & Space Company Inc. reserves the right, at our sole discretion, to limit or refuse access to our facility and/or technical or manufacturing information. Rights to inspection and audit can be granted but only after reasonable prior coordination for cost and schedule impacts and on a non-interference basis.

**15. GENERAL** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party.

**16. WAIVER:** Seller's election not to enforce any provisions hereof shall not be deemed a waiver of any such provision and Seller reserves the right to enforce said provisions thereafter. Waiver by Seller of a breach of any of these terms and conditions shall not be construed as a waiver of any other breach.

**17. COMPLETE AGREEMENT:** This Agreement constitutes the entire agreement between Seller and Buyer and supersedes in their entirety any and all oral or written agreements previously existing between Seller and Buyer with respect to the subject matter hereof. The terms and conditions stated herein shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade. No modifications or additions to said contract shall be binding upon Seller unless in writing and signed by an authorized representative of Seller.