

# INTERNATIONAL – COMMERCIAL TERMS AND CONDITIONS

## *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. ("Seller").

2. **PRICES:** Prices are net and are not subject to trade or other discounts except those that may be authorized on the face of Seller's invoice, and do not include any federal, state, county, local or other taxes, levies, imposts, duties, fees or other governmental charges, however designated, or costs of special packaging and insurance. Said charges, when applicable, shall be paid by Buyer. If any deduction for said charges is required to be made by law, Buyer shall pay in the manner and at the same time such additional amounts as will result in receipt by Seller of such amount as would have been received by Seller had no such amount been required to be deducted. 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:** Unless otherwise provided on the Order Acknowledgment form, payment shall be made to Seller's location set forth on such form in U.S. currency, secured by a confirmed irrevocable letter of credit, opened through (Bank \_\_\_\_\_), (branch & A/N \_\_\_\_\_) with terms acceptable to Seller.

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 U.S. 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 draw upon the letter of credit and 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. Buyer agrees to pay such interest charges and all collection and related 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. **EXPORT:** Buyer acknowledges that the products supplied by Seller under this Agreement are subject to the export controls under the laws and regulations of the U.S. and may be subject to the laws and regulations of foreign jurisdictions. Buyer shall assume responsibility for compliance with all such laws and regulations governing the use, export, re-export, and transfer of the products and shall obtain all required U.S. and local authorizations, permits, or licenses. Seller's acceptance of orders shall be subject to the issuance of appropriate export licenses and any other required permission for the purpose of exporting or importing the items.

5. **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 5, 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.

6. **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.

7. **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.

- 8. 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 confidential 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 that 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.
- 9. 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.
- 10. PACKAGING AND SHIPMENTS:** Seller's products will be packaged in accordance with standard commercial practices for international 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. 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.
- 11. DELIVERY, TITLE, AND RISK OF LOSS:** Unless otherwise provided for in advance, all shipments will be made "ex works" per Incoterms 2000, delivery to occur at Seller's factory. Upon Seller's tendering the products to Buyer at Seller's factory, title and risk of loss shall pass to Buyer. Buyer shall assume the risk of any loss or damage to the shipment thereafter.
- 12. GOVERNING LAW:** The terms and conditions stated herein shall be governed by and construed in accordance with the laws of the State of California as such laws apply to contracts between California residents performed entirely within California without giving effect to any conflict of law principles that would require the application of the laws of a different state. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 13. FORUM:** Any legal action or proceeding brought by either party against the other which arises out of or results from, or in any way relates to the sale of any products by Seller, must be adjudicated in the state and federal courts in Santa Clara County, California, and Buyer irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.
- 14. COMPLIANCE WITH LAWS:** In exercising its rights and performing its obligations under this Agreement, Buyer will comply with all applicable international, national, and local laws and regulations.
- 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 that 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.