

## TERMS AND CONDITIONS OF SALE

### **1. SCOPE:**

The terms and conditions of sale contained herein apply to all quotations made and contracts and purchase orders entered into by Amphenol Borisch Technologies, Inc., hereinafter "Seller". No terms or conditions stated by the Buyer 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 Buyer, 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the acknowledgment of the quotation or upon Seller's commencement of performance hereunder, shall be deemed to have withdrawn any such terms and conditions that conflict with, are inconsistent with, or are in addition to the terms and conditions set forth herein. The parties agree that if any quotation, purchase order, or acknowledgement is transmitted electronically neither Party shall contest the validity of these terms on the basis that any quotation, purchase order, or acknowledgement contains an electronic signature.

### **2. CHANGES:**

The Buyer may, at any time, in writing, make changes within the general scope of this order in the drawings, designs, specifications, shipping or packing instructions place of 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. No order accepted by Seller may have the quantity and/or delivery date terminated, canceled, reduced, re-scheduled, or otherwise modified by the Buyer except by mutual written agreement between Buyer and Seller.

### **3. NON-CANCELABLE, NON-RETURNABLE MATERIAL:**

In any event of termination, cancelation, quantity reduction or other Buyer implemented changes that affect material usage, Buyer will assume full financial liability for all finished goods, work in process (WIP), engineering labor, and materials purchased by Seller to comply with Buyer's purchase order which Seller's supplier identifies as non-returnable or non-cancelable. Seller will make its commercially reasonable efforts to return such material to minimize Buyer's financial liability. Seller's efforts are considered completed after a period of thirty (30) calendar days from date of cancellation. Buyer will provide payment to Seller for non-returnable, non-cancelable material within sixty (60) days of cancellation of Buyer's purchase order or portion thereof.

### **4. SHIPMENT SCHEDULE:**

This schedule reflects the Seller's best estimates, in accordance with Buyer's desires, and every effort will be made to meet the schedule barring delays which Seller could not reasonably foresee at the time of establishment of the schedule. Seller assumes no liability, consequential or otherwise, resulting from failure to meet the schedule.

## **5. FORCE MAJEURE:**

Seller shall not be liable to the Buyer for any failure or delay in performance if the failure or delay is caused by an event or occurrence that is beyond the Seller's reasonable control (a "Force Majeure Event").

A Force Majeure Event includes, without limitation, emergency circumstances arising during the period when these terms are in effect and which Seller cannot reasonably counteract and which it could not have reasonably foreseen (including but not limited to flood, earthquakes, volcanic eruptions and other acts of god, wars, military actions, prohibited import or export in accordance with applicable export control laws and regulations, pandemics, epidemics, and statutory amendments). Fires and strikes shall be regarded as a Force Majeure Event if they do not result from a fault-based or negligent act or omission of Seller and/or persons controlled by it (employees, contractors, advisers, etc.).

## **6. SHIPMENT:**

Shipment generally will be accomplished FOB Seller's manufacturing facility. Notwithstanding this, if Seller prepays the transportation charges, Buyer 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 and risk of loss shall pass from Seller to Buyer when the products are available for collection by Buyer at Seller's dock. Buyer assumes all risk for loss or damage upon delivery by Seller of products to Seller's dock. Buyer shall be responsible for making claim against carriers for any loss, and for any damage, visible or concealed, to products while in transit. Any such loss or damage shall not relieve Buyer of any obligations hereunder.

## **7. TERMS OF PAYMENT:**

Unless otherwise expressly provided herein, payments are net thirty (30) days after date of Seller's invoice. Seller reserves the right at any time to suspend credit or to change credit terms provided herein, when in its sole opinion the financial condition of Buyer so warrants. In the event payments are not made in a timely manner Seller may either (1) declare Buyer's performance in breach and terminate the order for default; (2) withhold future shipment under any order until delinquent payments are made; (3) deliver future shipments on a C.O.D. or cash in advance basis even after the delinquency in payment plus applicable storage charges, or inventory carrying charges have been paid in full, if any or (4) combine any of the above rights and remedies as is practicable and permitted by law. Interest may be charged on past due accounts at the rate of 1.5% per month. Buyer will be responsible to pay collection costs and reasonable attorney's fees should the account be placed for collection. Nothing herein shall waive any other rights and remedies of Seller permitted by law or set forth in any order resulting from this quotation and all rights and remedies set forth herein shall be considered cumulative and all other available rights and remedies.

## **8. TOOLING:**

Unless otherwise expressly provided in writing, Seller shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of this order.

## **9. WARRANTY:**

a. Seller undertakes that product sold hereunder to Buyer shall be free from defects in material and workmanship and shall conform to specifications. Anything to the contrary notwithstanding, products purchased or obtained by Seller from other manufacturers are warranted only to the extent of the original manufacturer's express warranty to Seller. The warranty period shall remain in force twelve (12) months from time of original delivery to Buyer. No other express warranty is given and no affirmation of the Seller by words or action shall constitute a warranty.

b. Material can be returned only upon written authorization of Seller and must be returned within ten (10) business days of receipt of such authorization including definite shipping instructions from Seller in the same condition as when received by Buyer. In Seller's sole discretion, defective material or material not conforming to specifications so returned shall be replaced or repaired by Seller without any additional charge, or in lieu of such replacement or repair, Seller may refund the purchase price applicable to such material. 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. Seller agrees to pay return transportation charges not exceeding those which would normally apply from original destination on all defective material or material not meeting specifications. However, Seller shall not be obligated for such charges when material returned proves to be free from defect and to meet specifications. Seller shall hold material that proves to be free from defect and to meet specifications for shipping instructions and Buyer shall furnish such instructions promptly upon request, but Seller shall not be liable to hold material any longer than 5 working days and if no such information is provided by Buyer, the material shall be returned to the original address it was first shipped to and shipping charges shall be invoiced to the Buyer.

c. Seller's liability shall be limited solely to the replacement or repair or to refunding the purchase price applicable to defective material or material not meeting specifications. Other than the liability set forth in any expressed warranty applicable to the products sold to the Buyer, 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 Buyer, it being understood that the products sold to the Buyer are not consumer products.

e. 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.

f. THE TERMS OF THE 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 OR RESULTING FROM ANY QUOTATION AND THESE TERMS ARE 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.

g. 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 ANY PRODUCT OR COMPONENT PARTS NOT MANUFACTURED BY SELLER.

h. SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY SELLER FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES, HOWSOEVER CAUSED.

**10. INSOLVENCY:**

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

**11. PATENT, TRADEMARK, AND COPYRIGHT INDEMNITY:**

The Buyer shall hold the Seller harmless against any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications or instructions. Seller shall not be liable for any infringement of any patent where infringement arises solely from use of the product with other devices or elements. 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. The above is in lieu of any other indemnity or warranty express or implied, with respect to patent, trademarks, or copyrights.

**12. TAXES:**

Unless otherwise specifically designated on the face of the purchase order, the prices 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 Buyer. Accordingly, Seller reserves the right to revise its quotation after the execution of the purchase order or contract between the parties to include any and all taxes or duties, including, without limitation the imposition of any applicable tariffs by a government authority, that may become due hereunder and Seller may invoice Buyer for the additional amount. This clause shall survive the acceptance and complete performance of any purchase order.

**13. SET-OFF:**

All monies owned under any purchase order or contract shall be due under the terms of this agreement and the Buyer is prohibited from setting off said sum due the Seller under this purchase order from sums,

whether liquidated or not, that are or may be due the Buyer which arise out of a different transaction with the Seller, its divisions, subsidiaries, or affiliates.

**14. APPLICABLE LAW:**

All purchase orders (or quotations) are subject to the laws and regulations applicable in the state of New York, U.S.A. without regard to its conflict of laws principles.

**15. ASSIGNMENT:**

Any assignment of a Party's rights hereunder, or delegation of a Party's obligations and duties hereunder, shall be void, unless the other Party gives its prior written consent.

**16. INDEPENDENT CONTRACTOR RELATIONSHIP:**

Seller is an independent contractor in all its operations and activities hereunder. Nothing in this Order creates any agency, joint venture, partnership or other form of joint enterprise, employment, or fiduciary relationship between Buyer and Seller. Neither Buyer nor Seller has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

**17. SEVERABILITY:**

If any part, term, or provision of these terms are held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if these terms did not contain the part, term, or provisions held to be illegal or invalid.

**18. GOVERNMENT CONTRACTS:**

If the goods to be furnished under this contract are to be used in performance of a United States government contract or subcontract, Buyer shall place the government contract number on Buyer's purchase order, and Buyer shall provide to Seller the clauses of the applicable government procurement regulation(s) which are mandatorily required by federal statute to be included in government subcontracts shall be incorporated herein by reference. Buyer agrees to provide progress payments to the maximum extent permissible under the prime contract.