

BLUE SKY RESEARCH GENERAL TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale ("Terms") shall govern all orders for and purchases of products and services from Blue Sky Research ("BSR"), unless other terms are specifically designated by BSR to apply to a specific product or service (See SOLE TERMS, INCONSISTENCIES, ORDER OF PRECEDENCE, below).

PRICE The price for any product or service (hereinafter "Product") shall be the price stated in BSR's Quotation for Product ("BSR's Quotation"). BSR's Quotations are valid for 30 days unless otherwise stated in BSR's Quotation. If the price is stated by reference to a published price list, then the price shall be the published price in effect at the time BSR receives buyer's purchase order. Prices stated are exclusive of all taxes, fees, licenses, duties or levies ("Taxes") and, unless otherwise stated in BSR's Quotation, transportation charges, freight and insurance. All Taxes related to Product shall be paid by buyer (other than taxes assessed against BSR's net income), or in lieu thereof, buyer shall provide a tax exemption certificate acceptable to the relevant taxing authorities. Taxes and other charges payable by buyer may be billed as separate items on BSR's invoice.

PAYMENT TERMS; COLLECTION COSTS; SECURITY TERMS. Payment terms are net 10 days from date of BSR's invoice to buyer. If BSR deems a customer to have become uncreditworthy, BSR reserves the right to require alternative payment terms, including without limitation sight draft, letter of credit, or payment in advance. Payment for partial shipments shall be based on unit or prorated prices, and payment for partial installation(s) shall be based on percentage of completion of installation. If payment is not received by the due date, BSR may assess and buyer agrees to pay a late payment charge at the rate of 1% per month (12% per year) or the maximum legal rate, whichever is less, of the amount due from the due date to the date of payment. If BSR retains a collection agency and/or attorney to collect unpaid amounts, BSR may invoice buyer for, and buyer will pay, all costs of collection, including without limitation reasonable attorneys fees. Buyer hereby grants to BSR and BSR reserves a purchase money security interest in Product purchased hereunder, and in any proceeds thereof, for all amounts owing to BSR for or related to such Product. Upon request by BSR, buyer shall sign any reasonable documents required for BSR to perfect such security interest. Payment in full of all amounts owed for and related to such Product shall release the security interest on the Product.

CREDIT TERMS. BSR may, at any time and in its sole discretion, limit or cancel the credit of buyer as to time and amount, suspend shipments, demand payment in cash before delivery of Product, and demand assurances of buyer's performance. If within 30 days buyer fails to agree and comply with the different terms of payment demanded, or fails to give adequate assurances of performance, BSR may, without prejudice to any other right or remedy BSR may have: (1) by notice to buyer, treat such failure or refusal as a repudiation by buyer of that portion of buyer's order not then fully performed, whereupon BSR may cancel all further deliveries, and any amounts unpaid for non-cancelled Product shall immediately become due and payable; or (2) make shipments under reservation of a security interest and demand payment against tender of title documents.

DELIVERY; TITLE AND RISK OF LOSS. BSR will use reasonable efforts to ship Product within a reasonable time after ordered, or, if a shipment date is indicated in BSR's Quotation or otherwise agreed upon in writing by an authorized representative of BSR, on or before such date. BSR may make delivery in installments, and each installment shall be deemed to be a separate sale. BSR may render a separate invoice for each installment, which invoice shall be paid without regard to prior or subsequent installments. Unless indicated otherwise in BSR's Quotation, title and risk of loss with respect to all Products except Software, and risk of loss with respect to Software, shall pass from BSR to buyer upon delivery. Delivery shall be deemed made upon transfer of possession to a common or other third party carrier at BSR's facility.

CANCELLATION AND DEFERRAL. A PURCHASE ORDER IS NOT SUBJECT TO CANCELLATION BY BUYER. However, unless otherwise stated in BSR's quotation, buyer may defer the shipment date one time for up to 30 days by giving written notice to BSR at least 30 days before the scheduled shipment.

REJECTION. Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of receipt of Product. In addition, buyer must promptly return a rejected Product to BSR, accompanied by a valid return authorization number obtained from BSR. BSR may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, BSR, at its option, may repair Product or replace Product with an identical or substantially similar product. These are buyer's sole and exclusive remedies for damaged or missing Product, and, except for express warranty rights, for defective Product.

LIMITED WARRANTY. BSR makes only those warranties with respect to Product expressly identified as "warranties" and set forth in BSR's current operating manual or catalog, or in a specific written warranty included with and covering Product, if any. **ANY PRODUCT NOT COVERED BY A WRITTEN WARRANTY IS SOLD "AS IS."** If buyer furnishes specifications to BSR, buyer agrees to defend, indemnify and hold BSR harmless against any claim that arises out of BSR's compliance with such specifications. Any description of Product recited in BSR's Quotation is for the sole purpose of identifying Product, and any such description is not part of any contract between BSR and buyer and does not constitute a warranty that Product shall conform to that description. Any sample or model used in connection with BSR's Quotation is for illustrative purposes only, and is not part of any contract between BSR and buyer and does not constitute a warranty that Product will conform to the sample or model. No affirmation of fact or promise made by BSR, whether or not in BSR's Quotation, shall constitute a warranty that Product will conform to the affirmation or promise. **THE WARRANTIES IDENTIFIED IN THE FIRST SENTENCE OF THIS PARAGRAPH ARE BSR'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM A STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.**

INTELLECTUAL PROPERTY INDEMNITY. Subject to the restrictions set forth in this Article and provided buyer complies with its obligations in this Article, BSR agrees to defend buyer, and indemnify buyer from and against any infringement damages finally awarded, in any legal action or proceeding brought by a third party against buyer to the extent that such action is based on a claim that the use of Product in a manner expressly advertised in writing or approved by BSR in writing or expressly authorized by any applicable label or other

written license furnished by BSR infringes any United States or foreign patent, copyright, trademark or other intellectual property right of such third party.

Buyer's Obligations. Buyer must notify BSR in writing of any claim for which it may seek defense and indemnity from BSR hereunder promptly after becoming aware of such claim, and shall cooperate with and provide all reasonable assistance to BSR, at BSR's expense, in the defense or settlement of such claim. BSR shall have sole authority to defend and/or settle any claim under this Article.

Remedy for Infringement, Rights of BSR, Exceptions. If any Product or any portion thereof is subject to a suit or other legal proceeding claiming that the Product infringes a third party's intellectual property right, or in BSR's opinion is (are) likely to become subject of such a claim, BSR shall, at its option, have the right to either: (a) procure for buyer the right to continue using the Product; or (b) replace or modify the Product so that it becomes non-infringing; or (c) require buyer to return the Product and upon return, refund to buyer the price actually paid by buyer for the Product, less a reasonable amount for use, damage or obsolescence; or (d) substitute for the infringing Product other suitable, non-infringing products. BSR shall have no liability or obligation hereunder for any infringement based upon: (i) the use of Product in combination with any product not provided by BSR or intended for use with Product, or based upon any modification to Product made by buyer or a third party, if such claim would not have occurred but for such combination or modification; or (ii) any modification, marking or branding applied to Product by BSR at the request of the buyer.

THE FOREGOING STATES THE ENTIRE LIABILITY OF BSR, AND THE EXCLUSIVE REMEDY OF BUYER, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR ANY OTHER INTELLECTUAL PROPERTY RIGHT BY PRODUCT OR ANY PART THEREOF OR USE THEREOF.

FORCE MAJEURE. BSR shall not be liable for any delay or failure of performance, including without limitation failure to deliver or failure to install, where such delay or failure arises or results from any cause beyond BSR's control, including, but not limited to, flood, unusually severe weather, earthquake or other act of God, strike, boycott, or other labor disputes, embargo, governmental regulation or an inability or delay in obtaining materials. In the event of any such delay or failure of performance, BSR shall have such additional time within which to perform its obligations hereunder as may be reasonably necessary under the circumstances; and BSR shall also have the right, to the extent necessary in BSR's reasonable judgment, to apportion Product then available for delivery fairly among its various customers in such manner as BSR may consider equitable.

LIMITATION OF LIABILITY. IN NO EVENT SHALL BSR BE LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF BSR'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF PRODUCTS OR PERFORMANCE OF SERVICES, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY BSR OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BSR IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, DOWNTIME, OR FOR LOSS OF REVENUE, PROFITS, GOODWILL, OR BUSINESS OR OTHER FINANCIAL LOSS.

SOLE TERMS; INCONSISTENCIES; ORDER OF PRECEDENCE. These Terms, together with BSR's Quotation, any applicable label license or other written conditions of use and any other terms and conditions expressly agreed to in writing by an authorized representative of BSR ("collectively, "BSR's Terms"), constitute the complete, exclusive and entire agreement between BSR and buyer with respect to purchases of Product (unless other terms and conditions are expressly designated to be applicable by BSR in writing), and BSR's offer to sell is expressly limited to such terms. Such terms shall take precedence over and supercede and replace all prior or contemporaneous understandings or agreements, written or oral, and any of buyer's additional or different terms and conditions, which are hereby rejected and shall be void. Buyer's submission of a purchase order or other instrument regarding the purchase of Product in response to BSR's Quotation or any other BSR document that includes or incorporates these Terms shall be deemed acceptance of these Terms to the exclusion of any other terms and conditions appearing in or referenced in such purchase order or other instrument, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in such purchase order or other instrument or elsewhere. Any acceptance by BSR of any offer of buyer is expressly conditioned on buyer's assent to and acceptance of BSR's Terms to the extent they are additional or different terms. Except as otherwise provided in these Terms, in the event of an inconsistency between these Terms and the terms appearing on BSR's Quotation or other agreement signed by an authorized representative of BSR, the terms appearing on BSR's Quotation or such other agreement shall supersede and take precedence over the inconsistent provision(s) of these Terms, and all other provisions of these Terms shall remain in full force and effect.

CHOICE OF LAW. Any contract between BSR and buyer relating to Product, including these Terms, and any disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of California, U.S.A, excluding both its choice of law provisions and the UN Convention on Contracts for the International Sale of Goods.

EXPORT CONTROLS. Customer agrees that it will not export or transfer Product for reexport in violation of any United States laws or regulations, or to any denied or prohibited person, entity, or embargoed country in violation of such laws or regulations.

MISCELLANEOUS. No amendment of BSR's Quotation or these Terms or modification thereof shall be binding unless in writing and signed by a duly authorized representative of both BSR and buyer. BSR's failure to exercise any rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights hereunder. Headings are included herein for convenience of reference only and shall not constitute a part of these Terms for any other purpose. If any provision of BSR's Terms shall be held to be invalid or unenforceable for any reason, such provisions shall, to the extent of such invalidity or enforceability, be severed without in any way affecting the remainder of such provision or any other provision thereof, all of which shall continue in full force and effect.