



## TERMS AND CONDITIONS OF SALE (09/07)

### ACCEPTANCE:

All quotations and sales by U.S. Dynamics Corporation (USD) are subject to USD's then current Terms and Conditions of Sale. Buyer hereby agrees to accept the materials, products or services hereby ordered and accept these terms and conditions of sale. Any modification of these terms must be made in writing and submitted to USD for approval and acceptance. These terms and conditions of sale together with any referenced exhibits, attached or other documents, constitute the entire agreement between the parties with respect to the subject matter and supersede any prior or contemporaneous written or oral agreements pertaining thereto.

### APPLICABLE LAWS:

This Contract is governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws, provisions, except that any provision in this Contract that is (i) incorporated in full text or by reference from the Federal Acquisition Regulations (FAR); or (ii) incorporated in full text or by reference from any agency regulation that implements or supplements the FAR or; (iii) that is substantially based on any such agency regulation or FAR provision, shall be construed and interpreted according to the federal common law of government contracts.

The parties agree to comply with all applicable local, state and federal laws, orders, rules, regulations, and ordinances. Seller shall procure all licenses/permits, pay all fees, and other required charges and shall comply with all applicable guidelines and directives of any local, state, and/or federal governmental authority.

USD's warranty obligations for repair/overhaul items are limited to the terms set forth below:

The repair/overhaul of an item by USD is warranted against defects in material or workmanship for one (1) year from the date of shipment from USD. This warranty does not cover normal wear and tear and shall be null and void if modified, improperly installed or used, damaged by accident or neglect, or in the event any parts are improperly installed or replaced by the user. This warranty covers those parts, sub-assemblies, or any other item that was involved in the original repair/overhaul.

USD warrants the item to the original purchaser (Buyer) of the repair/overhaul. USD's sole obligation under this warranty shall be to furnish parts and labor for the repair or replacement of items found to be defective in material or workmanship during the warranty period. If USD determines that the item returned to it for warranty service is not defective as herein defined, the Buyer shall pay all costs, handling and transportation. The above warranty is in lieu of all other warranties, express or implied, oral or written, statutory or otherwise, including any implied warranty of use or fitness for a particular purpose. In addition, USD's liabilities for warranty claims shall not, in any event exceed the invoice price of the original repair/overhaul claimed defective, nor shall USD be liable for delays in repair/overhaul of items.

No waiver, alteration, addition or modification of the foregoing warranty shall be valid unless made in writing and signed by an Executive Officer of USD.

**INDEMNIFICATION:**

Buyer jointly and severally agree to defend, indemnify and hold Seller and its affiliates and their respective directors, officers, principals, managers, members, partners, shareholders, employees, and controlling persons and their affiliates (Seller and each such person being an "Indemnified Party"), harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and attorneys' fees, legal fees and any other expenses in respect thereof or in enforcing their rights hereunder, by reason of or resulting from or attributable to its breach of this Agreement.

Buyer will defend, at its own expense, any action brought against USD to the extent that it is based on a claim that any customer supplied designs, processes, or documentation that constitutes a direct infringement of any duly issued United States patent or infringement of any copyright, trade secret, or other proprietary rights. Buyer will pay all damages and costs awarded against USD in such action which are attributable to such action, provided that customer is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance necessary to defend or settle such claim.

The foregoing states the sole and exclusive liability of the parties to this Agreement for patent, copyright, trade secret or other proprietary rights infringement and is in lieu of all conditions or warranties, express, implied, or statutory, in regard thereto.

**LIABILITY LIMITATION:**

Notwithstanding anything to the contrary contained in this Agreement, except with respect to any indemnification right provided for

infringement of intellectual property rights, neither party will be liable for incidental, special, consequential or punitive damages, lost profits, lost business or cost of procurement of substitute goods or services.

**INFRINGEMENT:**

Seller warrants that all work, materials, services, equipment, parts and other items provided by Seller pursuant to this quotation, shall be free from claims of infringement (including misappropriation) of third party intellectual property rights and that any use of sale of such items by Buyer or any of Buyer's customers shall be free from any claims of infringement.

**PAYMENT:**

Payment terms on all sales and quotations are Net 30 days from the date of delivery, unless otherwise agreed to in writing signed by both parties.

**DISPUTES:**

Any controversy or claim that may arise out of or in connection with this quotation that after good faith negotiations cannot be resolved to both parties' satisfaction may be resolved by submitting the claim to a court of competent jurisdiction.

**REMEDIES:**

Except as otherwise provided herein, the rights and remedies of both parties hereunder shall be in addition to the rights and remedies at law or in equity. Failure of either party to enforce any of its rights shall not constitute a waiver of such rights or of any other rights and shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies; rather, the same shall remain in full force and effect.

**SEVERABILITY:**

If any provision hereof is held invalid or unenforceable by a court of competent

jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be deemed a valid and binding agreement enforceable in accordance with its terms.

**EXPORT:**

Any or all Products may be subject to export or resale restriction or regulation, and Customer acknowledges that it will comply with the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR).

**FORCE MAJEURE:**

Neither Buyer nor Seller shall be liable for any delay failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, Acts of God, fire, floods, freight embargoes, labor disputes, shortages, inability to procure product, supplies of raw materials, severe weather conditions, computer interruptions, terrorism, epidemics, and quarantine restrictions.

**GOVERNING LAW:**

This Agreement will in all respects be governed by and construed in accordance with the laws of the State of New York, excluding that body of laws known as conflict of laws. The prevailing party in any legal action or proceeding to enforce this Agreement will be entitled to recover from the non-prevailing party its reasonable attorney's fees, and related costs and disbursements, incurred in connection with such proceeding or the enforcement of this Agreement. Both parties agree to waive trial by jury.

**INDEPENDENT CONTRACTORS:**

The parties are and will remain independent contractors to one another, and nothing herein will be deemed to cause this Agreement to create an agency, partnership, joint venture or any other relationship between the parties.

**TERM AND TERMINATION:**

All Contracts shall become effective once signed by both parties and will apply to the sale of all products and services prior to its termination. Either party may terminate an Agreement at any time upon ninety (90) days prior written notice to the other party. In the event of any termination of this Agreement with or without cause, or any termination or cancellation of any purchase order, or party thereof, and notwithstanding anything to the contrary contained in this Contract, customer will be liable for payment for any special, custom, Customer specific, non-stock, value-added, including all work in process, open orders in support of the Agreement and for payment for products delivered prior to the effective date of termination.

**TERMINATION FOR CONVENIENCE:**

USD may terminate part or all of this Contract for its convenience by giving written notice to Seller.

Upon termination, in accordance with USD's written direction, Seller will immediately: (i) cease work; (ii) prepare and submit to USD an itemization of all completed and partially completed deliverables and services; (iii) deliver to USD and all work completed up to the date of termination at the agreed upon prices and (iv) delivery upon request any work in process. In the event USD terminates for its convenience, after performance has commenced, USD will compensate Seller for the actual, allowable and reasonable expenses incurred by Seller for work in process up to and including the date of termination provided Seller uses reasonable

efforts to mitigate USD's liability under this clause.

In no event shall USD be liable for lost or anticipated profits, unabsorbed indirect costs or overhead, or any sum in excess of the total Contract price. Seller's termination claim shall be submitted within ninety (90) days from the effective date of termination.

Seller shall continue all work not terminated.

**TERMINATION FOR DEFAULT:**

USD may terminate this Contract for default, in whole or in part, if Seller (i) fails to comply with any of the terms of this Contract; (ii) fails to make progress so as to endanger performance of this Contract; (iii) fails to provide adequate assurance of future performance; (iv) files or has filed against it a petition of bankruptcy; or (v) becomes insolvent or suffers a material adverse change in financial condition. Seller has ten (10) days (or such longer period as USD may authorize in writing) to cure any such failure after receipt of notice from USD. Default involving performance delays, bankruptcy or adverse changes in financial condition shall not be subject to the cure provision.

Following a termination for default of this Contract, Seller shall be compensated only for work actually delivered and accepted. USD may require Seller to delivery to USD any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Contract. USD and Seller shall agree on the amount of payment for these other deliverables.

In the event of a termination for default, Seller shall be liable to USD to cover costs, in addition to USD's other rights and remedies at law or in equity.

Upon the occurrence and during the continuation of a default, USD may exercise any and all rights and remedies available to it under applicable law and equity including without limitation cancellation of this Contract. If after termination for default of this Contract, it is determined that Seller was not in default, such termination shall be deemed a termination for convenience.

Seller shall continue all work not terminated or cancelled.

**CONFIDENTIALITY:**

It is understood and agreed that the terms of this Agreement are confidential and no new release, advertisement or public announcement, or denial or confirmation of the same, concerning any part of the subject matter of this Agreement will be made by either party hereto without the prior written consent of the other party in each instance. Further, the parties hereto acknowledge that, during the term hereof, they may become aware of confidential, secret or proprietary information with respect to bidding, pricing, suppliers and customers, or lists thereof, research, technical data, and other procedures and systems and that disclosure of such information would materially and adversely affect the affected party. Each party hereto agrees to maintain such confidentiality and secrecy and not to disclose any such information to any person, firm or other entity, or to utilize the same in any manner or form, except as may be expressly required by the terms and conditions of this Agreement. Notwithstanding anything to the contrary, the confidentiality provisions set forth in this paragraph shall survive termination of this Agreement.