

## Terms & Conditions of Sale

Boyd Corporation ("Seller") in consideration for acceptance of Buyer's purchase order for Seller's products and services (collectively "Goods") as the same is referred to in the accepted purchase order of even date and in which these Terms and Conditions are incorporated therein and constitute a material part of the purchase order, Seller accepts Buyer's order. These Terms and Conditions are also fully incorporated in any price list or schedule, quotation, acknowledgement or invoice from Seller relating to the Goods and constitute the complete and exclusive statement of terms governing the sale of the Goods. Buyer's acceptance of the Goods shall serve as Buyer's agreement to the Terms and Conditions contained herein. These Terms and Conditions may only be modified by an instrument in writing and signed by Buyer and a duly authorized representative of Seller.

**1. Prices:** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for 30 days after the date of Seller's quotation or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment of the Goods is received and accepted by Seller within such time period. Seller reserves the right to modify or cancel Seller's quotation or modify a time of shipment or date of deliverable at any time during the thirty (30) day period following Seller's quotation or at any time before Buyer's unconditional authorization for shipment of Goods. If such authorization is not received by Seller within such 30 day period, Seller shall have the right to change the price of the Goods to Seller's price for the Goods at the time of shipment. All prices are exclusive of taxes, transportation and insurance, which shall be borne by Buyer, and valid based upon minimum quantities stated within Seller's quotation. Seller reserves the right to revise price at any time due to documented cost increases.

**2. Quote Validity Period:** Unless otherwise agreed upon in writing, Seller's quotation is valid for a period of 30 days from the date noted on the quote.

**3. Taxes:** Any current or future tax or governmental charge (or increase in same), including any value added tax, affecting Seller's costs of production, sale, or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

**4. Terms of Payment:** Unless otherwise specified by Seller, terms are net 30 days from date of Seller's invoice in U.S. currency. Seller shall have the right, among all other remedies available to Seller under law, either to terminate this agreement or suspend further performance under this Agreement or at Seller's election any other agreements with Buyer in the event Buyer fails to make any payment under this Agreement when due and Buyer hereby consents to any such election by Seller. Buyer shall be liable for all expenses, including costs and attorneys' fees, relating to the collection of past due amounts, such delinquent payment shall bear interest at the rate of eighteen percent (18%) per annum or an amount permitted by law, whichever is less, from the date on which the payment is due until it is paid. Any payment due to either party under this agreement shall be made in full without any set-off, restriction, condition deduction or withholding for or on account of any counterclaim. Should Buyer's financial responsibility become unsatisfactory as determined by Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries of the Goods. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller shall have the right to discontinue deliveries. Title to all Goods supplied by Seller to Buyer shall remain with Seller and shall not pass to Buyer until all sums due on the Goods are fully paid to Seller. Seller may secure its interest by filing a UCC-1 form.

**5. Shipment and Delivery:** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Risk of loss and legal title to the Goods shall transfer from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. Unless otherwise specified by Seller, all shipments are Exworks (Incoterms 2000). Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery. Buyer shall inspect Goods delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 10 days after receipt of such Goods shall be an unqualified acceptance of such Goods.

**6. Rescheduling and Expedite Fees:** Seller reserves the right to charge Buyer for rescheduling units to ship earlier than the shipment date acknowledged or quoted lead times. All fees associated with expedited shipments (such as air freight) will be the responsibility of Buyer. Orders that are within 12 weeks of shipment cannot be shipments beyond 12 weeks from Seller's order acknowledgment date may be subjected to additional costs. Units rescheduled to as date beyond 12 months from the date of the purchase order will be treated as if they were on a separate purchase order for the purpose of recalculating quantity discounts and Buyer will be liable for the difference. Units that have no work-in-process and for which no proprietary or custom material has been purchased can usually be rescheduled without additional fees. For units where work has been and/or materials have been done and/or materials have been committed, a rescheduling fee shall be due equal to the cost of raw materials purchased and work-in-process for the units being rescheduled times 1.8% per month or fraction of each month past original ship date. Rescheduling fees are calculated at the time of rescheduling and due Net 30 days from the date of rescheduling.

**7. Limited Warranty:** Subject to the limitations of Section 6, Seller warrants that the Goods manufactured by Seller will be free from defects in workmanship and will conform to the specifications under which such Goods are sold at the time of shipment under normal use and regular service and maintenance for one year from the date of manufacture by Seller. The warranties set forth in sections 5 and 7 are the only warranties given by Seller with respect to the Goods and are in lieu of and exclude all other warranties, express or implied, arising by operation of law or otherwise, including without limitation, merchantability and fitness for a particular purpose whether or not the purpose or use has been disclosed to Seller in specifications, drawings or otherwise, and whether or not Seller's Products are specifically designed and/or manufactured by Seller for Buyer's use or purpose. The warranties given herein do not extend to any losses or damages due to misuse, accident, abuse, neglect, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, environmental conditions, improper installation, repair, handling, maintenance or

application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and determined detrimental to the Goods by Seller, all warranties contained herein shall be null and void. The physical property values given in Seller's product technical data sheets are typical values only and such values do not represent, and are not construed as product specifications. If within 30 days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's exclusive remedy, repair, correct or replace per its return policy, or refund the purchase price for, that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Advance written permission to return Goods must be obtained from Seller. Such Goods must be shipped transportation prepaid to Seller. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods prior to authorizing return. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranties for the remainder of the original warranty period or 90 days from the date of shipment, whichever is longer. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components. Pre-Production (prototype, engineering verification test, or design verification test) units are sold **"where is, as is, with all faults"** without warranty of any kind, express or implied, including, without limitation, implied warranties of merchantability or fitness for intended purpose.

**8. Limitation of Liability:** The sole and exclusive remedy for breach of any warranty hereunder (other than the warranty provided under section 7) shall be limited to repair, correction or replacement, or refund of the purchase price under section 5. Seller shall not be liable for any damages caused by delay in Seller's timely performance to supply the Goods to Buyer. In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort or otherwise), shall Seller's liability to Buyer or to Buyer's customers and end users, exceed the price paid by Buyer for the specific Goods provided by Seller giving rise to the claim or cause of action. Buyer agrees that in no event shall Seller's liability to Buyer or its customers and end users, include any special, incidental, consequential or punitive damages. The term "consequential damages" shall include, but is not limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk. Seller's aggregate liability for any and all claims, liabilities, expenses, and all other damages or remedies arising under these terms, whether such claims are in contract, negligence (which for avoidance of doubt will include willful misconduct and gross negligence), or other tort, strict liability, warranty, indemnity, or other type of liability, shall in no event exceed ten percent (10%) of the trailing twelve (12) month revenue with Buyer.

**9. Patents and Copyrights:** Seller warrants that the Goods sold, expressly excepting any Goods made for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given on the condition that Buyer promptly notifies Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperates fully with Seller and permits Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right at its option and expense, to procure for Buyer, the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability. In no event shall Seller be liable for any incidental, consequential or punitive damages.

**10. Excuse of Performance, Force Majeure:** Seller shall not be liable for delays in performance or for non-performance due to any cause beyond its reasonable control including, but not limited to, acts of god; acts of buyer; war; fire; flood; weather; sabotage; epidemics; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders, invasions, insurrections of a larger extent, or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or cancelled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**11. Termination:** In the event of Buyer cancellation, for convenience or default, Buyer assumes all liability to Seller for payment of the (a) Goods delivered, (b) finished good inventory, (c) work in process, and (d) raw materials on order at time of cancellation required per any and all purchase orders, stocking agreements, VMI, Min/Max requirements, blanket orders, material agreements, or releases.

**12. Non-Cancellation:** Buyer may not cancel, terminate for convenience, or direct suspension of manufacture, except on mutually acceptable terms.

**13. Changes:** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees and dates of delivery. Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods made to order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

- 14. Technical Design Change:** Seller reserves the right to re-quote if the performance or dimensional criteria change prior to Buyer's order placement or during the period of fulfilling Buyer's order.
- 15. Drawings and Data:** Timely performance by Seller is contingent upon Buyer's supplying to Seller, when needed, all required technical information, including drawing approval, and all required commercial documentation. All drawings furnished by Seller to Buyer are proprietary and remain the exclusive property of Seller, and are to be used by Buyer only for the purpose of operating and maintaining the Product(s), and not for manufacture of duplicate or similar requirement or parts by others.
- 16. Custom Tooling, Dies, Fixtures, and Production Equipment:** All production equipment, including custom tooling, dies, and fixtures shall be Seller's property which Seller be free to move, transfer, dispose of, or use in any manner or for any purpose whatsoever, including but not limited to production of products for other customers.
- 17. Property or Equipment Furnished by Buyer:** All tooling, jigs, dies, Fixtures, materials, and other property supplied or paid by Buyer will be maintained by Seller to meet the performance requirements to Buyer's order. Seller will not be responsible for any loss or damage to property or other equipment furnished by Buyer for any reason, whether or not caused by the negligence of Seller, and Seller shall be free to move, transfer, dispose of, or use such property in any manner or for any purpose whatsoever without notice to Buyer. Seller shall not be required to identify such property or to account to Buyer in any way for such property at any time. Buyer agrees to indemnify and save Seller harmless from claims and expense (including expense of litigation) for bodily injury and property damage which may arise or result from the use of Buyer's property, whether or not arising from joint or concurring negligence of other parties.
- 18. Nuclear/Medical:** The Goods sold hereunder are not for use in connection with any nuclear, medical, life-support and other high risk applications where failure could lead to loss of life or catastrophic property damage. Buyer accepts Goods with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that Seller's liability is based on negligence or strict liability.
- 19. Assignment:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
- 20. Indirect/Non-Recurring Set Up Fees:** Indirect and/or Non-Recurring Set Up (NRSU) fees, which may include but are not limited to, machine set up, engineering fees, CAD programming fees, tool and/or die design, maintenance and/or production; if any, are in addition to the price of the Goods and are due and payable upon completion of the Indirect and/or NRSU activities. All such Indirect and/or NRSU activities shall be and remain the property of Seller. Charges for Indirect and/or NRSU activities do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.
- 21. Buyer's Purchase Orders:** Orders received in response to Seller quotations are subject to acceptance by Seller. When accepted, Seller will furnish specified goods at quoted prices according to the schedule in Seller's sales order acknowledgment. In the event of changes, Seller reserves the right to suspend manufacture and delivery of goods on Buyer's order pending mutual acceptance of the revisions. Seller reserves the right to discontinue deliveries under Buyer's order by reason of unfavorable change in Buyer's financial condition, credit status, or payment history.
- 22. Intellectual Property:** Seller's intellectual property, including without limitation, all patents, copyrights, trade secrets, trade-dress and any other intellectual property of any kind (including without limitation, that which exists in the underlying technology), furnished by Seller to Buyer in connection with this agreement is the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing, and sale. Possession of Goods, pre-production units, specifications, prints or drawings, or any other materials does not convey to Buyer any rights or license thereto. If Seller, or any person employed by or working under the direction of Seller, conceives or first reduces to practice: (a) any invention whether by virtue of experimental, development or research activities, including engineering related thereto and whether or not patentable; (b) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted; or (c) any improvement in the design of the Goods or any alternative or improved method of accomplishing production of the Goods, referred to as "Inventions", such Inventions shall be owned by Seller and deemed confidential and the propriety property of Seller.
- 23. Buyer's Compliance with Laws:** In connection with the transactions contemplated by this agreement, Buyer is familiar with and shall fully comply with all applicable laws, regulations, rules and other requirements of the United States and of any applicable state, foreign and local governmental body in connection with the purchase, license, receipt, use, transfer and disposal of the Goods.
- 24. Export/Import:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.
- 25. Government Contract Conditions:** In the event Buyer supplies Goods to the U.S. government or to a prime contractor selling to the U.S. government, the following Federal Acquisition Regulation (FAR) clauses are accepted by Seller and are made part of this agreement applicable to such supply: 52.222-21 prohibition of segregated facilities; 52.222-26 equal opportunity; 52.222-35 equal opportunity for special disabled veterans, veterans of Vietnam era, and other eligible veterans; 52.222-36 affirmative action for workers with disabilities; and 52.219-8 utilization of small business concerns. No additional FAR or FAR supplement clauses are accepted by Seller. In the event Buyer elects to sell Goods to the U.S. government or any national, state, provincial or local non-U.S. governmental entity or to a prime contractor selling to such entities, Buyer does so solely at its own option and risk, and agrees not to obligate Seller as a subcontractor or otherwise to the U.S. government or other governmental entity except as described in this section 18. Buyer remains solely and exclusively responsible for compliance with all statutes and regulations governing sales to the U.S.

government or any national, state, provincial or local non-U.S. governmental entity. Seller makes no representations, certifications or warranties whatsoever with respect to the ability of its Goods or prices to satisfy any such statutes and regulations.

**26. General Provisions:** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to these Terms and Conditions of sale by Seller's receipt, acknowledgement, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are hereby rejected and deemed a material alteration hereof. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgement or publication shall be subject to correction by Seller. In the event that any provision or portion thereof contained in these Terms and Conditions is held to be unenforceable such provision shall be severed and all remaining provisions shall remain in full force and effect.

(a) If Seller is a corporation, this agreement shall be governed by the laws of the state of California, U.S.A., without reference to its choice or conflict of laws principles. The parties agree to submit to the exclusive jurisdiction of the courts of the state of California for all actions arising in connection herewith.

(b) If Seller is a European incorporated entity, this agreement shall be governed by the laws of England. Any dispute arising out of or in connection with this agreement that cannot be resolved through friendly consultation shall be referred to and finally resolved by arbitration in London, England before the London Court of International Arbitration in accordance with its arbitration rules. The arbitral award shall be final and binding on the parties.

(c) If Seller is an entity incorporated in the Asia pacific region, this agreement shall be governed by the laws of the Hong Kong special administrative region of the People's Republic of China. Any dispute arising out of or in connection with this agreement that cannot be resolved through friendly consultation shall be referred to and finally resolved by arbitration in Hong Kong before the Hong Kong International Arbitration Centre in accordance with its arbitration rules. The arbitral award shall be final and binding on the parties.

(d) No action, regardless of form, arising out of transactions relating to this agreement, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.