

SBIRTC-07 Sellers Standard Terms and Conditions for International Standard Product Quotations (1/08)

1. ORDERS: All orders are subject to acceptance by Seller. These terms and conditions are applicable and are an integral part of purchase orders resulting from Seller's quotations. These terms and conditions shall govern and supersede any terms and conditions integrated and/or supplied by the Buyer, unless separately agreed to in writing by both the Seller and the Buyer. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions.

2. VALIDITY: All quotations submitted are valid for sixty (60) days from the date of the quotation unless otherwise stated on the face of the quotation. Until accepted by Buyer, the quotation is subject to change within the validity period.

3. PACKAGING: Standard commercial packaging is included in the quoted price. Special packaging will be provided at Buyer's expense when specified. Reasonable care is exercised in packaging goods for shipment and no responsibility is assumed by Seller for delay, breakage or damage after delivery to the carrier. Buyer will file any claims for breakage or damage directly with the carrier. Seller will render reasonable assistance in securing satisfactory adjustment of such claims.

4. TITLE AND DELIVERY: All sales are F.O.B. origin unless otherwise agreed to in writing by the Buyer and Seller. Title and risk of loss pass to Buyer upon delivery to the carrier at shipping point. Unless shipment method is specifically directed from the Buyer, Seller will exercise its own discretion. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Seller expressly takes exception to any liquidated damages or late fees imposed by the Buyer for any reason. In the event of any default by Buyer, Seller may decline to make further shipments.

5. INSPECTION & ACCEPTANCE: Buyer must inspect the goods within thirty (30) days after delivery, and give written notice to Seller of any products being rejected; describing the product and details as to the reason the product is being returned. Returned product will be processed under the Seller's Warranty provision. Buyer will have irrevocably accepted any and all products if Buyer has failed to give Seller written notice of rejection within the 30-day period. Buyer's inspection and/or acceptance tests shall not exceed the inspection and/or test procedures customary in the industry for the products delivered by Seller. Seller may charge to Buyer any costs resulting from the testing, handling, and disposition of any products returned by Buyer which are not found by Seller to be nonconforming.

6. PAYMENT: Terms of payment shall be prepayment, or payment by Letter of Credit (LOC) with the following terms:

- a. The LOC is to be a Stand Alone document not combined with any other documents. The LOC must be from a single party only. SBIR will not accept a Transfer LOC.
- b. There must be a 30 day window between the delivery date and the LOC expiration date with both the expiration date and place specifically stated on the LOC.
- c. The only negotiation paperwork required will be a Commercial Invoice, Air Waybill and Packing List.
- d. The LOC will be written for 100% payment in US dollars upon presentation of documents
- e. There will be no penalties or extra charges written into the LOC.
- f. The LOC will be written to reflect FOB Santa Barbara / Ex-Factory: Santa Barbara Infrared, Inc.
- g. SBIR does not quote for shipping charges.
- h. If the customer chooses to deviate from these terms and conditions, it must be agreed upon by and with SBIR and the customer prior to writing the LOC.
- i. Customer is to pay the costs associated with generating the LOC and any revisions.

Each shipment shall be considered a separate independent transaction, and payment thereof shall be made accordingly. If shipment is delayed by Buyer, Seller may invoice on the date when Seller would have made shipment but for the delay. All invoices shall be paid within the term stated, even if product has been returned under the Seller's Warranty provision. Buyer is not authorized to make reductions on the invoice without prior written approval of Seller. Buyer will pay a delinquency charge in the amount of 1 1/2 % per month (18% per annum) on overdue amounts, in addition to all amounts otherwise due Seller available by law.

7. TAXES: Buyer agrees to pay all applicable federal, state, and local taxes, duties and other fees on product and services ordered.

8. SELLER'S WARRANTY: LIMITED WARRANTY: IT IS EXPRESSLY AGREED THAT NO WARRANTY, OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTY (EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SELLER, EXCEPT THAT SELLER WARRANTS THE GOODS TO BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP. Seller will replace, repair, or issue credit, at their option, any product returned under warranty by the Buyer. If the defect cannot be duplicated at Seller's facility, Seller may exercise the option of returning the product to the Buyer. All transportation charges will be the obligation of the Buyer. The warranty period will be two (2) years from the date of shipment for all Standard products unless otherwise indicated in the quotation. Seller will not be liable for loss of profit, loss of use, incidental damages, consequential damages or any loss, cost, or damages of any kind based upon a claim for defective products or breach of warranty.

9. CHANGES TO SPECIFICATIONS: Seller reserves the right to change the specifications of any product without notice. If specifications are changed, Seller assumes no obligation to provide the change on products previously purchased or to continue to supply discontinued products or versions. Seller may substitute products or components of equivalent or higher performance.

10. ASSIGNMENT: Buyer will not assign its order or any interest therein or any right thereunder without the prior written consent of Seller.

11. GOVERNING LAWS: Irrespective of the place of performance, this contract will be construed, and interpreted according to the laws of the State of California.

12. TERMINATION: Buyer will be liable for Seller's costs incurred, plus a reasonable profit, for the portion of the work terminated, in accordance with generally accepted accounting principles, together with cancellation charges. Some orders may be subject to a minimum cancellation fee. Seller reserves the right to cancel all or part of any order accepted if inaccurate or incorrect information is supplied by Buyer, which in Seller's judgment, affects the order, or otherwise materially changes the rights or responsibilities of Buyer and/or Seller.

13. OWNERSHIP DATA RIGHTS / PATENTS: Buyer shall indemnify, defend and hold Seller harmless against any expenses, damages, cost or losses including attorneys fees, resulting from any suit or proceeding instituted or claim asserted, for infringement of patents, copyrights, trademarks or other intellectual property rights or for unfair competition arising from compliance with Buyer's designs or specifications or arising from use of products furnished hereunder in any manufacturing or other process or the combination of such products with items not supplied by Seller. The sale of products or any parts thereof hereunder confers upon Buyer no license, express or implied, under any patent rights of Seller.

Any invention, discovery, proprietary information, software, system, data, or report resulting from the work performed under this quotation or resulting order, will be the sole property of the Seller. All patents, copyrights, trade secrets, trademarks, or other intellectual property resulting from work under this quotation or resulting order shall be the sole property of the Seller. Seller shall have the full right to use such property in any manner without any claim on the part of the Buyer and without any duty to account to the Buyer for such use. Buyer agrees to assign to Seller any patent or patent application resulting from work performed under this quotation or resulting order.

14. LIMITATION OF LIABILITY: LIABILITY OF SELLER TO BUYER FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY ACTION INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, SHALL BE LIMITED TO THE PRICE SPECIFIED IN THE SALE CONTRACT FOR THE SPECIFIC PRODUCT OR PRODUCTS THAT HAVE CAUSED THE DAMAGES, OR ARE DIRECTLY OR INDIRECTLY RELATED TO THE CAUSE OF ACTION. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR OTHERS FOR LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF USE OR OTHER SPECIAL COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION THEREOF, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST BUYER BY ANY THIRD PARTY. BUYER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH, THE USE OR MISUSE OF THE PRODUCTS BY BUYER, ITS EMPLOYEES, OR OTHERS. NO OBLIGATION OR LIABILITY OF SELLER WILL ARISE OUT OF SELLER RENDERING OF TECHNICAL ADVICE IN CONNECTION WITH BUYER'S ORDER OR THE PRODUCTS FURNISHED HEREUNDER.

15. FORCE MAJEURE: Seller will not be responsible or liable for any delay or failure in performance arising as a result of fire, accident, acts of God, acts of public enemy, war, labor disputes, failure or delays, transportation, inability to secure product, raw materials or machinery for the manufacturing process, requirements or acts of any government or agency thereof, judicial action or other causes beyond Seller's control.

16. CONFIDENTIAL INFORMATION: All drawings, diagrams, specifications, technical information, and other material and information furnished by Seller and identified as confidential (hereinafter collectively called "Confidential Information") is proprietary to Seller and contains trade secrets. Buyer shall not use, reproduce, distribute or disclose such Confidential Information, except that Confidential Information may be disclosed, with appropriate safeguards against re-dissemination, to employees of Buyer with respect to whom such information is necessary to the performance of their duties hereunder. Buyer recognizes that such proprietary information is unique and consents to the remedy of injunction in addition to damages for a violation of this provision.

17. PROHIBITED USES: Buyer may not in any way; modify the product (except as permitted in the normal use of the product), reverse engineer, disassemble, or make any attempt to copy the product or transfer the product to any person or entity.

18. EXPORT CONTROL: Buyer will comply with all export control laws and regulations of the United States Government and with any applicable laws and regulations of any other country. Buyer agrees not to export or re-export either directly or indirectly any technical data furnished hereunder or the direct product of such technical data to any country which, as set forth in the Export Administration Regulations(EAR) of the United States Department of Commerce, is prohibited. Changes in the EAR of the United States Department of Commerce, subsequent to contract acceptance that result in the export license becoming invalid, the contract will be considered voided and SBIR will be entitled to the rights afforded by Termination Clause #12 above.