PURCHASER ACCEPTANCE

These Terms and Conditions constitute a binding contract between Purchaser and Seller and are referred to herein as either “Terms and Conditions” or this “Agreement.” Purchaser accepts these Terms and Conditions by making a purchase from or placing an order with Seller if the order is confirmed in writing by Seller. If Seller does not confirm receipt of the order in writing, then the purchase agreement shall not exist. If Seller does not accept an order in writing, any conduct by the Purchaser which recognizes the existence of this order, including but not limited to, placing orders for the respective product, the acceptance or acknowledgment of invoices or the maximum amount allowed by law. Extended terms waiving interest charges must be arranged prior to shipment and approved by Seller. All purchase orders are accepted subject to, and the obligation of Seller to make deliveries is subject to, the right of Seller to require of the Purchaser payment of all or any part of the purchase price in advance of delivery or to make shipments C.O.D. If the Purchaser fails to make advance payment when requested bySeller, or if the Purchaser is in default in the payment of any part of the purchase price, all rights of the Seller under this Agreement shall be terminated and unless the Purchaser within five (5) days after receipt of notice from Seller to accept or refuse to accept C.O.D. shipments, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or in equity, to cancel the order or refuse to make further deliveries, and declare immediately due and payable all unpaid amounts of goods previously delivered to the Purchaser. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly.

SHIPLMENTS

All shipments are, unless otherwise specifically provided, F.O.B. place of manufacture or warehouse location that is the address for all一方 shipment counter direct and confirmed in writing. Where special domestic, export or MIL Standard packaging is provided, including special, greater expense, a charge will be made to the Purchaser for this extra expense. If the Seller establishes a port of shipment and the shipper shall not deliver to the carrier the carrier’s charges, said costs shall be charged to the Purchaser. The scheduled shipping term is our best estimate of the time the order will be shipped from our factory and we assume no liability for loss, damage, or consequential damages due to delay.

TAXES

Federal, state or local excise, sales or use taxes shall be paid by the Purchaser.

PATENTS

Seller shall defend any suit or proceeding brought against the Purchaser so far as based upon an assertion that any Product, or any part thereof, furnished under this order constitutes a direct infringement of any United States patent having a claim or claims covering solely the Product itself, or any part thereof, or the normal use for which such Product was designed, if notified promptly in writing and giving authority, information and assistance (at Seller’s expense) for the defense of same; and Seller shall pay all damages and costs awarded against the Purchaser in such case. In case said Product, or any part thereof, is enjoined, Seller shall at its own expense and at its own risk, either (1) procure for the Purchaser the right to continue using said part or product, or (2) replace the said Product with a non-infringing Product, or (3) modify it so it becomes non-infringing, or (4) remove said Product and refund the purchase price and transportation costs thereof. The foregoing states the entire liability of Seller for patent infringement by said Product thereof.

DESIGN RIGHTS RESERVATION

Purchaser acknowledges and agrees that by the acknowledgement or acceptance of this Agreement, Seller does not relinquish, sell, transfer, or in any way release any of the designs, drawing design, or data, or any other information or rights relating to the subject matter of this Agreement or a Statement of Work. No license or other rights shall be the subject matter of a separate contract to be valid or binding on Seller or anything in the order to which this acknowledgement or acceptance relates to the contrary is hereby expressly rejected and not accepted.

WARRANTY

EXCEPT FOR THOSE WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED. Items sold by Seller under this purchase order are warranted only as stated below:

Subject to the exceptions and conditions specified below, Seller accepts, correct, by either repair, or, at its election, by replacement, any defects of material or workmanship which develop within one year after delivery of the instrument to the Purchaser by Seller or by an authorized representative provided that investigation and factory inspection by Seller discloses that such defect developed under normal and proper use.

The exceptions and conditions mentioned above are the following:

(a) Some components in the instrument, if not intended to, and will not function for one year. If any such component or accessory manufactured by Seller, and part of the item sold, fails to give reasonable service for reasonable period of time, Seller will, at its election, replace such repair or component or accessory. What constitutes reasonable service and what constitutes a reasonable period of time shall be determined solely by Seller after Seller is in possession of all the performing operating conditions and other pertinent factors and after such component or accessory has been returned to Seller, transportation prepaid.

(b) Items classified as consumable by Seller after discovery of such defect, transportation charges prepaid, and will be returned or replaced to the Purchaser with the transportation charges collected unless the item is found to be defective, in which case Seller will pay the return transportation charge.

(c) Seller makes no warranty concerning components or accessories not manufactured by it. However, in the event of the failure of any component or accessory not manufactured by Seller for which Seller gives reasonable assistance to the Purchaser in obtaining from the respective manufacturer whatever adjustment is reasonable in the light of the manufacturer’s own warranty.

Seller shall be released from all obligations under its warranty to the extent the Products (i) have been altered, repaired or modified by persons other than Seller’s authorized personnel; or (ii) have been altered, repaired or modified by persons other than Seller (or if sold or uses the consent of Seller, or (iii) have been misused or negligently handled or operated by Purchaser.

Representations and warranties made by any person, including dealers and representatives of Seller, which are inconsistent in any way with the representations and warranties made by Seller for the Product(s) shall not be binding upon Seller unless reduced to writing and approved by an officer of Seller.

LIMITATION OF LIABILITY

UNLESS SPECIFIED IN WRITING IN THIS AGREEMENT, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL OR PROFITS ARISING OUT OF THE SALE OF GOODS OR CLAIMS OF ANY THIRD PARTY BASED ON ANY BREACH OF EXPRESS OR IMPLIED WARRANTY OR ANY OTHER THE FAILURE OF ANY PRODUCT PURCHASED HEREUNDER. LIMITATION OF LIABILITY OF SELLER FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE DOLLAR AMOUNT PAID BY PURCHASER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM.

GOVERNING LAW

THOSE TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, AND ANY SALE OF PRODUCTS HEREBEUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN ORANGE COUNTY, CALIFORNIA, AND PURCHASER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBJECTS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. PURCHASER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION OVER ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions more than one (1) year after the cause of action has arisen. The rights and remedies provided Seller under these Terms and Conditions are cumulative, in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

EXPORT RESTRICTIONS

Seller shall not export, re-export or transfer, directly or indirectly, any product or technical data received hereunder, to any country or end user to which such export, re-export or transfer is restricted by United States Export Control Regulations or local country law or regulation, without first obtaining any required export license, authorization, certification or approval. If Purchaser receives or otherwise disposes of any Product purchased hereunder Seller will comply with any export restrictions applicable to such transfer.

Purchaser shall indemnify, defend and hold Seller harmless from and against any loss, liability, cost or expense (including reasonable legal fees) related to any action arising from Purchaser’s failure to comply with this Section.

CANCELLATIONS, DELAYS, RETURNS & CREDITS

Purchaser acknowledges and agrees that standards to charges to standard Products: 60 days prior to shipment, 10% days prior to shipment and 25% seven days prior to shipment. A 25% restocking charge will apply to all returned items, which are accepted within 60 days of shipment. All returns are subject to inspection. Transportation charges for returned items will be at the Purchaser’s expense.

A cancellation charge on special and limited availability Products will be 100% of the quoted price if engineering, scheduling or ordering of special parts has begun.

ARBITRATION

Claims involving, whether in contract, tort or otherwise, whether presenting, present or future, and including, but not limited to, statutory, common law, intentional tort or equitable claims arising from or relating to the Products, the interpretation or application of these Terms and Conditions or any Statement of Work or the breach, termination or validity thereof, the relationships which result from these Terms and Conditions or any Statement of Work (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), and any action or proceeding arising out of or related to any claim, will be conducted pursuant to the Rules of the American Arbitration Association. Neither Seller nor Purchaser will have the right to designate that claim in court or to have a jury trial that such Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. Further, Purchaser will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Notwithstanding any choice of law provision included in these Terms and Conditions, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Irvine, California. Any award having jurisdiction may enter judgment upon the award rendered by the arbitrator(s). Each party involved will bear its own cost of legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Seller arising out of the Products will be exclusively litigated in court rather than through arbitration.

MISCELLANEOUS

Seller may subcontract all or any portion of its rights or obligations with respect to the sale of Products or assign the right to receive payments, without Customer’s consent. Customer may not assign these Terms and Conditions, or any of its rights or obligations herein without the prior written consent of Seller. Subject to the restrictions in assignment contained herein, these Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement or any Statement of Work will be deemed amended, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Seller and Customer is one of a buyer and seller, and Seller is not responsible for any obligation or condition of this Agreement or a Statement of Work is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall not be affected thereby and the other provisions of this Agreement or the applicable Statement of Work. Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party’s otherwise enforceable rights.

Astronomics Test Systems Inc. ("Seller") TERMS AND CONDITIONS OF SALE- TS001

Revision 20/02