

ASTRONICS ADVANCED ELECTRONIC SYSTEMS CORP.
COMMERCIAL TERMS AND CONDITIONS
For Advanced Electronic Systems Goods

1. TERMS OF CONTRACT: The following are the terms and conditions upon which Astronics Advanced Electronic Systems Corp., a Washington State corporation, ("Seller") agrees to sell and deliver its goods and services to the Buyer.

These Terms and Conditions, together with any additional terms on the face of Seller's quotation and/or order acknowledgement (collectively, the "Agreement") constitute the entire agreement between Buyer and Seller with respect to the subject matter of this Agreement, and supersede any and all prior understandings and agreements (whether written or oral) between Buyer and Seller with respect to the subject matter of this Agreement. In the case of any conflict between the terms of this Agreement and terms of any purchase agreement or purchase order entered into by Buyer and Seller pursuant to this Agreement, the terms of this Agreement shall control, except to the extent expressly otherwise agreed in writing signed by an authorized representative of Seller and Buyer.

Buyer's orders ("Orders" herein) to purchase the goods and/or services as herein described shall make specific reference to this Agreement. However, any Order issued by Buyer to Seller in response to or based upon the quotation or price list which have these Terms and Conditions attached or which incorporate these Terms and Conditions by reference shall be deemed to incorporate the terms and conditions hereof whether or not reference is made hereto, and the terms and conditions of this Agreement shall take precedence over and supersede any terms or conditions contained in such Orders. No modification or addition to this Agreement shall be affected by the acknowledgment or acceptance by Seller of any Order, acknowledgment, release or other form submitted by Buyer containing other or different terms or conditions, and any such other or different terms or conditions are hereby rejected by Seller.

2. PRICES: Unless otherwise expressly stated by Seller, prices quoted herein assume delivery within 6 months after the date of the quotation or such other date as may be stated on the face of the quotation, if different. If delivery is delayed at Buyer's request beyond such date, prices are subject to revision. Prices do not include shipping or insurance unless expressly stated.

3. TAXES: Prices do not include applicable sales, excise, use, or other ad valorem taxes, duties or fees which Seller may be required to pay or collect in connection with the sale, production, transportation or use of the goods (except taxes on Seller's income). Buyer shall pay or shall reimburse Seller for all such taxes, duties and fees.

4. PAYMENT AND SECURITY INTEREST:

Unless previously approved for net 30 day credit, or unless expressly stated by Seller's proposal, payment terms are either irrevocable and confirmed letter of credit or payment in advance by wire transfer. Seller will provide Buyer with detailed, written payment instructions prior to shipment. If the Buyer's financial creditworthiness fails to meet commercially acceptable standards, Seller reserves the right to cancel an Order upon notice to Buyer. Seller may withhold further performance if Buyer fails to make payments when due (with respect to this Order or any other payment obligations due Seller). Buyer hereby grants to Seller a security interest in the goods for recovery of the purchase price and/or license fee upon the Buyer's default. Overdue payments shall be charged interest at lesser of the rate of 18% per annum or the maximum permitted by law. If Seller is required to retain a collection agency or attorney to collect overdue payments, all reasonable collection costs, including attorneys fees, shall be payable by Buyer. All payments shall be made in U.S. dollars.

5. DELIVERY, TITLE AND TRANSPORTATION: Shipment of the goods to Buyer is subject to Seller's availability schedule. Lead times(s) quoted are based on current forecasts, and are subject to confirmation at time of Order placement. Seller shall use its best efforts to meet the delivery dates confirmed at time of Order placement.
For Buyers within United States and Canada. The goods shall be delivered to Buyer at the FOB point set forth in Seller's quotation.

For Buyers outside United States and Canada. Unless otherwise agreed to, the goods shall be delivered to the Buyer Ex Works Seller's manufacturing facility in accordance with Incoterms 2000.

For All Buyers. Title to and risk of loss of the goods shall pass to Buyer upon their delivery to freight carrier irrespective of delivery point. If any shipping costs, including insurance and export costs or fees, are incurred by Seller, such costs shall be for the account of and invoiced to Buyer.

6. EXCUSABLE DELAY: Seller shall not be liable under this Agreement or otherwise for any failure or delay in making deliveries when such failure or delay is due in whole or in part to any cause beyond Seller's reasonable control or to any cause not arising from Seller's fault or negligence. Such causes shall include, but are not limited to, acts of war, acts of terrorism, epidemics, pandemics, riots, strikes, labor disputes, supply shortages (including unusual increases in costs of supplies/parts); actions of subcontractors, civil disturbances, acts of God, government restrictions and regulations, flood, earthquakes, and fire.

7. ACCEPTANCE OF GOODS:

a) Unless a good is expressly subject to installation and/or testing, if Buyer does not reject any good within fourteen (14) days after receipt thereof, then Buyer shall be deemed to have accepted such good.

b) If a good is subject to acceptance testing, such testing shall be accomplished using Seller's applicable procedures or programs. If installation or testing by Seller is not included in the purchase price, acceptance by Buyer shall be presumed unless Buyer demonstrates within fourteen (14) days of delivery that the goods are not in normal operating condition.

c) If installation by Seller is included in the purchase price, acceptance shall occur at the installation site when Seller demonstrates that the applicable test procedures or programs have been successfully completed or the good is otherwise demonstrated to be in normal operating condition. If installation is scheduled or delayed by Buyer for more than thirty (30) days after delivery, Buyer shall be deemed to have accepted the goods on the thirty-first (31st) day from the date of delivery.

8. LIMITED WARRANTY:

a) "Seller warrants that all goods delivered (except those described in 8.b below) or services performed by Seller hereunder shall be in conformance with the written specifications for such goods or services (including, if applicable, any written deviations) and will be free from defects in material and workmanship for the following periods after date of delivery of goods to Buyer or date of service, as the case may be:

i. **Airborne Power and Control Products:**

1. Thirty-six (36) months on new line replaceable unit(s);
2. Twelve (12) months for all other goods or services.

ii. **Cabin Electronics:**

1. Thirty-six (36) months on new line replaceable unit(s);
2. Twelve (12) months for all other goods or services.

iii. **Ballard Technology Legacy Products (Aircraft Data Interface Products):**

1. Thirty-six (36) months for Test & Simulation Hardware Products when used in a controlled environment equivalent to an office or laboratory. Damage caused to test and simulation products by their use in a rugged or extended temperature environment is not covered by this warranty;
2. Twenty-four (24) months for Embedded COTS Hardware Products;
3. Ninety (90) days for cables and other accessories.
4. Ninety (90) days for software products to perform substantially in accordance with their accompanying written materials.

b) Seller warrants that all supplies, accessories, service parts and replacement parts provided hereunder shall be in conformance with the written specifications for such goods (including, if applicable, any written deviations) and will

be free from defects in material and workmanship for the longer of (i) one (1) year after date of delivery to Buyer or (ii) the remainder of the term of the warranty applicable under 8.a above less turnaround time.

c) Only Warranty; Remedies. THE ABOVE-STATED WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING FROM COURSE OF DEALING, TRADE USAGE OR SAMPLES SUPPLIED. Seller does not warrant that operation of any software will be uninterrupted or error free (although it is warranted to operate in conformity with its specifications). Seller's obligation and liability and Buyer's sole remedies under this warranty are limited to (i) repair or replacement of defective goods after return of the defective good(s) to Seller's designated facility or re-performance of the services or (ii) if the goods are not repaired or replaced or the services not re-performed in a reasonable time, credit for the defective service's purchase price or good's purchase price upon return of the defective good to Seller. Buyer must obtain a return of goods authorization including packaging and shipping instructions from Seller before goods can be returned for warranty service or adjustment. In no event shall Seller be liable for any special, incidental or consequential damages arising from breach of warranty.

d) Conditions. All product warranties begin from the time of shipment. The stated warranty periods are for products that are in the Production and Legacy lifecycles. Products in other lifecycles may have a different warranty period that will be quoted at the time of purchase. All warranties are conditioned upon Buyer giving written notice of any defect prior to the end of the warranty period. Seller's warranties and obligations hereunder shall not apply in the event of: misuse or abuse of goods (including, without limitation, use not in accord with Seller specifications or instructions or improper storage, has had its inspection seals broken or has been modified in any manner by Buyer or others except in strict conformance with Seller's written instructions), acts of God; or alteration or defacing of serial numbers. In making adjustments under this Section 8, Seller may require Buyer to furnish operating records of the Seller goods.

9. INDEMNITY:

a) General. If any third party alleges in a claim against Buyer that an injury to persons (including death) or damage to property (except for claims based upon loss, inability to use or reloading of data) has been caused by any negligent or willful act or omission of Seller in connection with the sale, licensing or installation of such goods (including, but not limited to, any defect in the materials or workmanship in the manufacture of the goods caused by such negligent or willful act or omission) or the performance of services, Seller will defend against such claim at its expense and will hold Buyer harmless against any judgment with respect thereto. The foregoing indemnification shall not extend to any losses, claims, damages, costs or expenses to the extent arising out of Buyer's or other third party's negligence or willful conduct. In such cases, Buyer shall indemnify and hold Seller harmless as provided in the first sentence, *mutatis mutandi* with respect to its negligence or willful conduct.

b) Patent. If any third party alleges in a claim against Buyer that all or a part of the goods delivered hereunder infringes any intellectual property rights in the United States and in the country in which Buyer takes delivery (if different), Seller will defend the claim at its expense and will hold Buyer harmless against any judgment with respect thereto. The foregoing indemnification shall not extend to any infringement claim based upon Buyer's combination of goods not delivered by Seller with Seller's goods, Buyer's modifications to Seller's goods or to the extent goods were made in accordance with drawings, samples, materials, or manufacturing specifications supplied or designated by Buyer. In such cases, Buyer shall indemnify and hold Seller harmless as provided in the first sentence, *mutatis mutandi*.

If any of Seller's goods are held to constitute an infringement and the use thereof is enjoined; or, if in consideration of any claim of infringement Seller deems it advisable to do so, Seller may in its sole discretion, and in full satisfaction of its obligations hereunder, either obtain the right for Buyer to continue the use of the good(s) or replace the good(s) with a non-infringing good(s) or refund to Buyer the purchase price of the good(s) paid by Buyer less reasonable depreciation for time used.

(c) Conditions. The foregoing indemnifications are contingent upon (a) the party claiming indemnification (the "Indemnified Party") giving the other party (the "Indemnifying Party") prompt written notice of any claim; (b) the Indemnifying Party being granted control of the defense, compromise or settlement of such claim, and (c) The Indemnified Party's assistance to the extent reasonably required for such defense. In the case of a conflict of interest

between the parties, each party may prepare and present its own defense. The prevailing party's costs of defense, including but not limited to attorney's fees and expert witness fees, shall be reimbursed by the other party. In the event both parties are found in part liable, each party shall be responsible for its own costs and its proportionate liability to the third party claimants.

10. SOFTWARE LICENSE: In the event that any good supplied hereunder contains or is separately supplied with any software (including any imbedded code sometimes referred to as "firmware" and including any up-dates or up-grades thereof subsequently supplied), title to such software is retained by Seller (although title to the media containing such software is transferred to Buyer) and such software is subject to the following license. Seller hereby grants to Buyer, and Buyer accepts from Seller, a perpetual, nontransferable and nonexclusive license to the software supplied under this Agreement solely for use in and with the goods with which such software is supplied. Buyer agrees not to copy or use the software for any other purpose. Buyer agrees not to translate, modify, reverse compile, reverse assemble or otherwise reverse engineer, or create derivative works based on any of the software, or permit another to do so. This license may only be transferred in connection with the sale or other transfer of the goods with which it was supplied.

In the event that any third party software is provided with the goods supplied hereunder, such software shall be subject to the terms and conditions of such third party's software license terms, provided that Seller has provided Buyer with copies of such terms prior to Buyer's use of such software, and in the event of a conflict between the terms in this Agreement and such third party license, the terms of such third party license shall prevail. Third party software vendors shall be deemed third party beneficiaries of the software license granted by this section and may enforce the terms of this section directly against Buyer and its successors in interest with respect to their software.

11. PROPRIETARY DATA: Any data delivered hereunder from Seller to Buyer may contain trade secrets or proprietary information. Such data, if any, will contain a restrictive legend prohibiting disclosure to a third party without Seller's prior written consent. Buyer shall not use such proprietary information for any purpose other than the maintenance, repair or operation of the goods, without the prior written consent of Seller. Upon cancellation of this Agreement or return of the goods, the Buyer shall return to Seller all such proprietary information or, at Seller's option, destroy such information and certify to its destruction.

In particular, and without limiting the generality of the foregoing, in no event shall Buyer, either directly or through any third party or parties, chemically analyze, disassemble, reverse engineer, re-engineer, redesign, decrypt, decipher, reconstruct, re-orient, modify or alter any of Seller's goods (including, without limitation, any circuit design, algorithm, logic, or program code supplied with or imbedded in any of such goods) whether or not the information gained by such actions (if properly labeled) would qualify as proprietary information or as a "trade secret" under applicable law.

12. LIABILITY: Except in the case of indemnification under sub-section 9(a), SELLER'S LIABILITY, whether in tort, contract or otherwise, with regard to any goods or services delivered under this Agreement SHALL IN NO EVENT EXCEED THE COMPENSATION PAID BY BUYER TO SELLER FOR THE GOOD OR SERVICE WITH RESPECT TO WHICH LIABILITY IS ASSERTED. SELLER SHALL IN NO EVENT BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES in connection with or arising out of this Agreement or use of the goods or services provided hereunder, including, without limitation, damages for loss or inability to use or reloading of data, loss of profit, revenue or use or for any liability of Customer to any third party with respect thereto.

13. ASSIGNMENT: Neither party shall assign any rights or delegate any duties under this Agreement without the prior written consent of the other, except to an entity which controls or is controlled by that party, such consent not to be unreasonably withheld. Any purported assignment without such consent shall be void. In the case of any assignment by Buyer, Buyer shall remain obligated as a guarantor of the assignee's payment obligations unless expressly released in writing by Seller.

14. APPLICABLE LAW: This Agreement shall be construed and enforced in accordance with the laws of the State of Washington, United States of America (without reference to any rules governing conflict of laws). The 1980 United
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Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to any purchase order issued in connection with this Agreement or to any purchase agreement entered into pursuant to this Agreement.

15. **DISPUTES:** In the event any dispute arises between the parties under or in relation to this Agreement or any Order, the parties agree to explore resolution of the dispute through negotiation or alternate dispute resolution (ADR) techniques before pursuing full scale litigation. If either party believes that the dispute is not suitable for ADR techniques, or if such techniques do not produce results satisfactory to either party, then either party may proceed as follows:

For Buyers within the United States: with litigation before any court of competent jurisdiction.

For Buyers outside the United States (including Canada): with binding arbitration as follows. Any dispute or difference shall be arbitrated in accordance with the International Dispute Resolution Procedures (Including Mediation and Arbitration Rules) in effect on the date any arbitration proceeding is commenced and the arbitration shall be administered by the by the International Centre for Dispute Resolution. The arbitration shall be held at such place or places as the arbitrator(s) deem appropriate and may, to the extent deemed appropriate by the arbitrators, be conducted in whole or in part by telecommunications. The arbitration shall be conducted in English, with the reasonable expenses of translation, if any, incurred by the substantially prevailing party (as determined by the arbitrator(s)) being payable by the other party to the extent ordered by the arbitrator(s).

16. **FOREIGN RESALE OR LEASE:** Shipment of Seller's goods and technical data outside the U.S. and its possessions or Canada may be regulated by the U. S. Departments of Commerce and State and by U. S. Customs and by the laws of other countries. Buyer shall be responsible for obtaining any necessary export or import licenses and for compliance with all applicable laws and regulations. To assist Buyer with its compliance with this section, Seller's products and related technical data are classified under Export Control Classification Numbers (ECCN's) 9A991.d and 9E991 respectively under the Export Administration Regulations unless otherwise stated by Seller. Buyer shall indemnify and hold Seller harmless against any loss, cost (including reasonable attorneys' fees), penalty, claim or demand of any kind arising out of or occasioned by any violation of this section or charge thereof.

17. **CHANGES IN GOODS:** Seller may change the construction or design of the goods without notice to the Buyer so long as the function and performance of the goods are not thereby adversely affected.

18. **CANCELLATION:** Prices are for shipment at one time to one destination unless otherwise specified. Orders entered upon Seller's books cannot be canceled or changed except with the written consent of Seller and upon terms that will indemnify Seller against all damages arising from such cancellation or change.

19. **NON-WAIVER:** Any failure on the part of Buyer or of Seller to enforce any provision of this Agreement shall not constitute a waiver of such provision, nor prejudice the right of Buyer or of Seller to enforce such provisions at any time subsequent to any such failure to enforce.

20. **SEVERABILITY:** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceability without invalidating the remaining provisions hereof. To the extent permitted by applicable law, Buyer hereby waives any provision of law that prohibits or renders unenforceable any provision hereof in any respect.

21. **GOVERNMENTAL REGULATION:** Should Seller elect to discontinue, curtail or limit the production or sale of the good(s) in consequence of the application of any governmental regulation or order (including but not limited to those relating to environment, ecology, energy, occupational safety and health, toxic substances, good safety, packaging, sale use or application, consumer protection or transportation), compliance with which will, in the sole judgment of the Seller, render the production, marketing or transportation of the good(s) economically, technically or commercially unfeasible, Seller may terminate this Agreement upon 30 days written notice to Buyer with sufficient time allowed Buyer to obtain alternate sources.

22. **NO RETURN OF GOODS.** Due to the heavily regulated nature of our industry, Seller cannot accept any return of purchased goods, even if in original containers or unopened. All sales of goods are final.

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