



Sales Terms & Conditions

1. General. These Sales Terms and Conditions (“Terms and Conditions”) are between Applied Physics Technologies (“APTech,” “us,” or “we”) and you (“Customer” or “you”) and apply to the sale, delivery, and transfer of the products listed on the attached quote and/or Sales Order. Your purchase is subject to these terms and no other terms or conditions shall apply. These Terms and Conditions are executed by both parties through the submission and acceptance of a PO as provided below, and shall be effective as of the date on the Sales Order.

2. Orders, Payment, and Shipping

a. Submission. Customer may inquire via email or telephone as to the availability of an item. APTech will respond to such inquiry with a quote, which is not an offer to sell any item, but for informational purposes only. Customer’s delivery of a complete purchase order (“PO”) to APTech constitutes an offer to buy the items listed on the PO (“Products”). To be complete, a PO must include the following information: (i) Product name(s) and applicable part number(s); (ii) quantity of each Product; (iii) unit price and total price; (iv) delivery date(s); and (v) any special packaging or shipping requirements.

b. Acceptance. If APTech accepts the offer, we will issue a “Sales Order,” which incorporates these Terms and Conditions. Any terms or conditions provided with a PO are specifically rejected and only these Terms and Conditions apply. If no Sales Order is issued, APTech does not accept your offer to purchase the Products, and you will not receive any Products.

c. Transportation and Taxes. Unless otherwise agreed by the parties, shipping and prices are FCA (Incoterms 2000) McMinnville, Oregon, and do not include shipping or handling costs, transport insurance, or levies or charges of any authorities. If the customer chooses Prepaid and Add as their shipping option, we retain the right to ship products on our preferred carrier. If the customer requests Collect as a shipping option, APTech will ship on the customer’s FedEx or UPS account. If a customer requests any other carrier other than UPS or FedEx or APTech has go through any 3rd party to make shipment arrangements, APTech will charge a 10% per shipment service charge. This charge will cover the time it takes APTech to fill out the necessary documentation, contact the preferred carrier and to set-up a new account with the carrier. Insurance will not be placed on any domestic orders unless specifically requested by the customer. APTech’s prices for the Products are exclusive of all excise, sales, use, property, value-add, and other taxes or duties levied with respect to the Products sold by APTech to Customer pursuant to these Terms and Conditions. Customer will be responsible for the payment of such taxes and duties. If such taxes and duties apply, they will be invoiced by APTech to Customer where APTech has the legal obligation to collect the same, unless Customer provides APTech with a proper tax exemption certificate. Specifically, if International customers use UPS there will be a second invoice to the customer for all taxes and duties charged to APTech as custom fees. All such taxes shall be shown as a separate item on APTech invoices. All custom fees are due upon receipt of invoice.

d. Invoice. APTEch will invoice Customer for Products. Payment is due in full within 30 days of the invoice date. Once an invoice reaches 35 days, APTEch reserves the right to charge a 10% late fee. Please contact us at time of P.O. if a payment plan is needed.

3. Cancellations/Order Changes. Customer cannot modify or cancel an order without the written consent of APTEch. In no event shall any order be modified or cancelled for any portion thereof already procured, processed, manufactured, or in process of being manufactured or processed, at the time the request for modification or cancellation is received by APTEch. In the event that both parties agree to a modification or cancellation, the Customer will be liable for all direct costs incurred by APTEch. APTEch will make commercially reasonable efforts to reduce such costs and mitigate Customer's liability. APTEch may cancel your order if you become insolvent, become subject to a bankruptcy proceeding, make an assignment to the benefit of creditors, or cease or suspend normal business operations. APTEch reserves the right to discontinue the manufacture or distribution of any Product at any time and without notice, and to cancel any unfilled orders with delivery dates more than six months in beyond the date of cancellation without liability of any kind.

4. Acceptance of Products and Returns. You have seven (7) business days in which to reject the Products as delivered due to nonconformity. Products not rejected will be deemed to be accepted by you on delivery as received in good condition, and with all accessories, components and other products in accordance with these Terms and Conditions. Rejected products must be returned to APTEch at your expense, and will be repaired, replaced, or refunded at APTEch's sole discretion once the Products are confirmed to be non-conforming. Conforming parts will be returned to you at your expense.

5. Warranty Returns. APTEch warrants to Customers only that the Products will meet specification and be free from defects in material in accordance with our published documentation related to the particular Product, and only under the use conditions provided in such documentation.

a. If any Product furnished by APTEch fails to conform to its warranty, APTEch's sole and exclusive liability will be, at our option, to repair or replace the nonconforming Product, or credit Customer's account with an amount equal to the price paid for the nonconforming Product provided that: (i) Customer promptly notifies APTEch in writing that the Product is non-conforming, and furnishes an explanation of the non-conformity along with the product part number and serial number; (ii) Customer obtains a return materials authorization ("RMA") number from APTEch, and the Product is returned to APTEch's service facility at Customer's risk and expense and in the original packaging and with all component products, parts, accessories, and other documents; and (iii) APTEch is satisfied that claimed non-conformities exist and were not caused by accident, misuse, neglect, alteration, repair, improper installation, improper use, or improper testing. APTEch will complete a thorough failure analysis to determine if the product qualifies for a warranty replacement. APTEch will have a reasonable time to make repairs, replace the Product, or to credit Customer's account.

b. If the product does not qualify for a warranty replacement, the Customer will be contacted and has the choice to: (i) have the part returned to Customer's facility at Customer's cost; or (ii) send a PO for the part to be rebuilt at Customer's cost.

c. APTech retains the right either to refuse the product or to charge you repair, restocking or related fees and delivery charges if you return products: (i) without an RMA number; (ii) with missing or improper packaging; (iii) with missing or damaged parts or components; or (iv) without pre-paid delivery. APTech may in that case deduct those fees and charges from any payments to be credited to you. APTech reserves the right to refuse any returns that are not warranty returns.

6. Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5 OF THIS AGREEMENT, NO OTHER WARRANTIES EXIST, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE.

7. Intellectual Property Ownership and License. APTech owns all IP Rights in the Products. “IP Rights” means any or all of the following, together with all rights in the same: (A) all United States and foreign patents and utility models and applications therefore and all reissues, divisions, reexaminations, renewals, extensions, provisionals, continuations and continuations-in-part thereof and equivalent or similar rights anywhere in the world in inventions and discoveries, including invention disclosures; (B) all trade secrets and other proprietary rights in knowhow or show-how, and all confidential or proprietary information including without limitation all documentation, hardware, models, prototypes, embodiments, test results, parts, and written and electronic works; (C) all industrial designs and any registrations and applications therefor throughout the world; and (D) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world. You must not and must not assist, either directly or indirectly, any third party to decompile, disassemble, reverse engineer or otherwise attempt to discover any trade secret of confidential information related to the Products.

8. Export Compliance. Customer agrees to comply with all federal, state, and municipal laws, including regulations under the U.S. Export Administration Act and the United States Foreign Corrupt Trade Practices Act. Licensee represents that it will not export, reexport, transship, or otherwise remove any Products from the United States, either directly or indirectly, without the consent of APTech and without first obtaining any licenses or approvals as may be required from the U.S. Department of Commerce and any other applicable agency or department of the United States Government. Customer represents and warrants that the Products will not be utilized for any of the following activities: (1) the design, testing and production/construction or use of nuclear weapons and nuclear facilities, (2) the design, development or use for missile development, and (3) the design, development, production, stockpiling or use of chemical or biological weapons and related facilities; and the Products will not be utilized for terrorist or narcotics trafficking activities. Customer represents and warrants that it is not subject to a denial or probation order issued by the BIS, and that neither it nor its affiliates or employees are listed on any Denied Persons List published by BIS set forth at www.bxa.doc.gov/dpl/thedenialist.asp. Further, Customer represents and warrants that neither it nor its affiliates or employees are listed on any Special Designated Nationals or Blocked Persons list published by OFAC set forth at www.treas.gov/offices/eotffc/ofac/sdnz/index.html. Any breach of this Section 8 is considered a material

breach of these Terms and Conditions, and APTEch may cancel the order without notice to the Customer and recover from the Customer all direct expenses incurred in processing the order.

9. Limits of Liability. UNLESS OTHERWISE PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL APTECH'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID TO APTECH BY CUSTOMER UNDER THE PO ASSOCIATED WITH SUCH LIABILITY.

10. Indemnification. APTEch will defend and indemnify up to the limits set forth in Section 9 Customer, its officers, directors, agents, employees, and affiliates from any and all third-party claims, liabilities, costs and damages (including attorneys' fees) arising from or in connection with any claims that the Products, or use thereof, infringe any patent, copyright, trade secret, or other proprietary right of any third party. Customer will promptly notify APTEch of the existence of any such claim. Customer will defend, indemnify, and hold APTEch, its officers, directors, agents, employees, and affiliates harmless from any and all thirdparty claims, liabilities, costs and damages (including attorneys' fees) resulting from or arising out of any act or omission of Customer or its employees, agents, or subcontractors, or arising out of the sale or use of the Products.

11. Force Majeure. Neither party shall be liable for damages due to any delay or default in performing any obligation hereunder (other than payment obligations) if that delay or default is due to acts beyond its reasonable control including acts of God or public enemy, acts of other parties, governmental laws, regulations or requirements, the acts or failure to act of any governmental authority, acts of civil or military authority, labor disputes, fires, riots, wars, embargoes, epidemics, floods, unusually severe weather, or shortage or absence of power or fuel.

12. Merger Clause/ Entire Agreement/ Modification of Terms. These Terms and Conditions constitute the entire agreement between APTEch and the Customer. To the extent that any terms in any PO conflict with these Terms and Conditions, these Terms and Conditions shall control and prevail. No modification hereof shall be of any force and effect unless in writing and signed by the party bound by such modification. The invalidity of any term or provision of the Terms and Conditions shall not affect the validity of any other provision. Waiver by any party of strict performance of any provision of these Terms and Conditions shall not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of these Terms and Conditions. The headings contained in these Terms and Conditions are for convenience of reference only and are not intended to have any substantive significance in interpreting this document. If these Terms and Conditions are translated into any language other than English, the English language version shall control.

13. Governing law/ Jurisdiction/ Arbitration. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of laws rules. The United Nations Convention on the International Sale of Goods will not apply to any transactions under these Terms and Conditions. The parties agree that any claim, dispute, or controversy arising from or

relating to any contract for APTEch's goods or services, directly or indirectly, shall be resolved by arbitration conducted in accordance with the then prevailing Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by a panel of three arbitrators. One arbitrator shall be selected by APTEch, a second by the Customer, and the third of which shall be selected by the two arbitrators selected by the parties. Unless otherwise agreed by both parties, the arbitration shall be held in the state of Oregon. Each party shall bear its own counsel and expert witness costs, and the parties shall each pay one-half of the fees of the arbitrators; provided, however, the arbitrators may, in their discretion, award fees and costs to either party. Any determination or award in arbitration rendered by all or a majority of the arbitrators shall be conclusive and binding upon the parties and may be entered as a final judgment in any court having jurisdiction. Any action to enforce the arbitration provisions herein, to enforce any determination or award resulting from arbitration, or to seek remedies not available in arbitration, may be brought only in the state and federal courts located in Oregon, and the parties hereto consent to be subject to the exclusive jurisdiction of such courts.

14. Notices. All notices under this agreement will be in writing and will be deemed to have been given if delivered personally or by a nationally recognized courier service, faxed or mailed by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth in the Sales Order.