



Standard Terms and Conditions of Sale

The following are the Terms and Conditions of Sale applicable to the sale of products from NRD, LLC:

1. DEFINITIONS

The term "Seller" as used herein shall refer to NRD, LLC and any wholly owned subsidiaries of Seller. The term "Buyer" as used herein shall refer to the customer designated on a Seller order acknowledgment ("Order Acknowledgement") which contains or incorporates by reference these Standard Terms and Conditions for Sale. The terms "Product" or "Products" refer to the goods or Services (as defined hereinafter) sold by Seller described on a Seller Order Acknowledgement and where applicable may refer to non-recurring engineering services and/or development of tooling. The term "contract" as used herein shall refer to the terms, conditions and warranties contained in this document.

2. PRODUCTS AND SALE TERMS

Buyer agrees to purchase and Seller agrees to sell Products specified in Seller's Order Acknowledgement under the terms of this document. Any terms or conditions in addition to or different from this document asserted by Buyer as applicable to this transaction, in a purchase order, on a web site, or otherwise incorporated by reference (including general or special conditions, plans, specifications, drawings, samples, or quality standard), are inapplicable and rejected by Seller. Buyer shall be deemed to have so assented unless Buyer notifies Seller to the contrary in writing within ten (10) days of receipt of this document. If for any reason Buyer should fail to accept these terms in writing, any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, including payment and/or acceptance of Products, shall constitute an acceptance by Buyer of this document and all of its Standard Terms and Conditions of Sale.

3. PRICES

Although it is Seller's practice to provide as much advance notice as possible, prices are subject to change without notice and adjustment to Seller's prices in effect at time of order placement. Unless otherwise specified by Seller, prices are for the specific quantity stated and do not include taxes nor charges for transportation, insurance, special packaging, licensing or marking. Prices for any undelivered goods or services may be increased by Seller in the event of any increase in the cost to Seller of supplies, raw materials, labor or services, or any increase in Seller's cost resulting from any cause beyond Seller's control.

4. PAYMENT

- (a) Payment will be made according to agreed upon terms: credit card, wire transfer, or check.
- (b) Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. Any check received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller, under this or any other contract, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing by Buyer to Seller; and the acceptance by Seller of such check shall not constitute a waiver of Seller's right to pursue the collection of any remaining balance.
- (c) Buyer agrees to pay the entire net amount of each invoice rendered by Seller pursuant to the terms of each such invoice without offset or deduction.

5. TERMS

- (a) Standard payment terms require receipt of cash in advance of performance for all new accounts. In the event that the Seller extends credit to the Buyer, the following additional terms set forth in (b)



through (e) below are hereby agreed to be applicable. Application for credit may take up to 30 days to process and is subject to approval by Seller.

(b) Buyer agrees to keep the account current and agrees to pay each invoice within **Net 30 days** from the date of invoice. Buyer agrees to provide funds in advance if their account has large disbursements that exceed the established credit limit. Where applicable, Buyer agrees to pay tooling and/or non-recurring engineering (NRE) fees on receipt of Seller's invoice for same. Lead times for sample delivery begins upon Seller's receipt of a signed, Buyer-approved specification and/or drawing and if applicable, Seller's receipt of payment for any tooling or NRE fees. Any credit terms extended to Buyer are not applicable to tooling and/or NRE fees. The amount of credit extended to the Buyer is subject to periodic review and any decision to increase, decrease or revoke the amount of credit granted to the Buyer shall be at the sole discretion of the Seller.

(c) Seller reserves the right to require payment in advance or C.O.D. or otherwise modify credit terms either before or after shipment of any or all of the goods specified herein, if, for any reason, Buyer's credit is or becomes objectionable to Seller. If Seller believes in good faith that Buyer's ability to make the payment called for by this contract is or may be impaired, Seller may cancel this contract or any remaining balance thereof, without incurring any liability. Buyer remains liable to pay for any goods already shipped along with any work in process.

(d) In the event that the Buyer fails to keep the account current, all amounts owed by the Buyer shall immediately become due and payable. The Buyer shall also become indebted to the Seller for costs of collection, including reasonable attorney fees, which arise if payment terms are not met. Said invoices not paid by maturity date will have a 1.5% per month late payment charge assessed against any unpaid balance from the due date of the invoice until the date of payment.

(e) If any indebtedness remains unpaid for thirty (30) days after the demand for payment, the Seller may, in addition to any other rights it has under other agreements and/or applicable law, exercise any or all of the rights of a secured party and forward Buyer to collections.

6. TAXES

Unless otherwise agreed in writing, Buyer shall be responsible for the payment of any and all Federal, state and local sales, use, and excise taxes and all other taxes and charges assessed in connection with sales made under this contract.

7. SHIPMENT

All shipments will be made ExWorks Seller's factory unless otherwise specified in Seller's Order Acknowledgement. In the absence of specific instructions, Seller will select the carrier. Title to the goods shall pass to Buyer upon delivery thereof by Seller to the carrier; thereupon, Buyer shall be responsible for the goods. Transportation from the ExWorks point designated in Seller's Order Acknowledgement, handling and insurance are at the cost of Buyer. Goods held for Buyer, or stored for Buyer, pending regulatory licenses approvals and/or for other reasons, shall be ExWorks Seller's holding area ("ExWorks Location") and shall be at the risk and expense of Buyer. Title of the goods shall pass to the Buyer when held in the "ExWorks Location" and shall be deemed complete and will be invoiced to Buyer, and all applicable terms herein contained in the Standard Terms and Conditions of Sale, including but not limited to, section 4.0 and 5.0. Claims against Seller for shortages must be made within 10 days after arrival of shipment.

8. DELIVERY

All delivery dates are approximate. Seller will use commercially reasonable efforts to fill orders according to the delivery dates acknowledged by Seller. Delivery may be made in installments. Default or delay by Seller in shipping or delivering the whole or any part or installment of the goods or services under this contract shall not affect any other portion thereof.



9. INSPECTION

Unless Buyer notifies Seller in writing within ten (10) calendar days from the date of shipment of any goods or services that said goods or services are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, it must also specify the reason(s) why the goods or services are being rejected.

10. SELLER'S LIMITED WARRANTY AND LIMITATION OF LIABILITIES

(a) Seller warrants that at the time of shipment the goods sold hereunder will be free from defects in material and workmanship, and will conform to Seller's applicable specifications, or if appropriate, to other specifications accepted by Seller in writing.

(b) If any defect within this warranty appears within one year from the date of shipment of goods, or the date of the delivery of services, by Seller, Buyer shall notify Seller immediately. Seller agrees, at its election and as Buyer's sole remedy, to repair, replace with the same or functionally equivalent goods, or issue a credit in the amount of the unit contract price for any goods which upon test and examination by Seller, do not comply with the above warranty. Any repair or replacement shall not extend the warranty period. No goods will be accepted for return or replacement without the written authorization of Seller with a designated Return Authorization Number (RMA). Upon such authorization, and in accordance with instructions by Seller, the goods will be returned shipping charges prepaid by Buyer pursuant to industry standards unless otherwise authorized.

(c) The limited warranty does not extend to any goods manufactured by Seller which have been subjected to misuse, neglect, accident, improper testing or installation, unauthorized repair, or alteration, whether by Buyer or others. This warranty shall not be expanded, and no obligation or liability will arise, due to technical advice or assistance, qualification or testing data or services Seller may provide in connection with Buyer's purchase.

(d) THIS LIMITED WARRANTY IS EXTENDED TO BUYER ONLY AND IS NOT TRANSFERABLE TO SUBSEQUENT PURCHASERS OR USERS OF PRODUCTS. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, NON-INFRINGEMENT OR OTHERWISE. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW. The remedies of Buyer shall be limited to those provided herein. No agreement varying or extending the foregoing warranty, remedies or this limitation will be binding upon Seller unless in writing, signed by a duly authorized officer of Seller.

(e) IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEED THE PRICE OF THE PARTICULAR PRODUCTS SOLD HEREUNDER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES.

(f) Products and Services Provided "AS IS." Development products, including without limitation prototypes and pre-production samples and any Services (whether or not paid for by Buyer) are provided "AS IS" without warranty of any kind.

11. PATENT INDEMNITY

(a) Seller shall conduct, at its own expense, the entire defense of any third party claim, suit or action brought against Buyer alleging that, without further combination, the use or resale by Buyer of the Products delivered hereunder directly infringes any United States patent or copyright, but only on the condition that:



(i) Seller receives prompt written notice within 5 days of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to Buyer for such defense;

(ii) Said Products were made according to a specification or design furnished by Seller or, if a process patent is involved, the process performed by the goods is recommended in writing by Seller; and

(iii) Provided all of the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages, excluding consequential and special damages and costs. If the use or resale of such goods is finally enjoined, Seller shall, at Seller's option, (1) procure for Buyer the right to use or resell the goods, (2) replace them with equivalent non-infringing goods, (3) modify them so they become non-infringing but equivalent, or (4) refund the purchase price (less reasonable allowance for use, damage and obsolescence).

(b) This indemnity does not extend to any suit based upon any infringement or alleged infringement arising from Products furnished by Seller that are: (1) altered in any way by Buyer or any third party if the alleged infringement would not have occurred but for such alteration; (2) combined with any other products or elements not furnished by Seller if the alleged infringement would not have occurred but for such combination; (3) designed or manufactured in accordance with Buyer's designs, specifications or instructions if the alleged infringement would not have occurred but for such Buyer designs, specifications or instructions; or (4) designed or manufactured in compliance with standards issued by any public or private standards body if the alleged infringement would not have occurred but for compliance with such standards. In no event shall Seller indemnify Buyer, or be liable in any way, for royalties payable based on a per use basis, or any royalty basis other than a reasonable royalty based upon revenue derived by Seller from Buyer from sales of the infringing Products. THE FOREGOING STATES SELLER'S EXCLUSIVE OBLIGATION AND BUYER'S SOLE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND BASED ON THE SALE AND USE OF PRODUCTS, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

(c) If any claim, suit or action of infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right is based on a design or specification furnished by Buyer or on the performance of a process not recommended in writing by Seller, or on the use or sale of the goods delivered hereunder in combination with other goods not delivered to Buyer by Seller, Buyer shall indemnify and hold Seller harmless therefrom.

12. PROPERTY AND OWNERSHIP RIGHTS

Unless otherwise mutually agreed in writing, the design, development or manufacture by Seller of a goods or Service for Buyer shall not be deemed to create a "work made for hire" and shall not give to Buyer any patent, copyright or any other intellectual property right interest in the goods or Services, or any portion thereof. All such rights shall remain the property of Seller. Unless otherwise agreed in writing, all tooling, fixtures, test equipment, models, patterns, molds, processing software and technology, and proprietary information of Seller, whether or not made for, obtained, created, or developed by Seller for the performance of this contract, shall remain the sole property of Seller; and the payment by Buyer of any costs or expenses relating to any of the foregoing (including non-recurring expenses), shall not be deemed to grant Buyer any ownership interests therein.

13. CHANGES

Unless otherwise provided in writing, Seller reserves the right to change specifications of goods ordered by Buyer herein, provided that the changes will not materially affect form, fit or function.

14. EXCUSABLE DELAYS

In addition to any excuse provided by applicable law, Seller shall not be charged with any liability for delay, non-delivery or failure to perform any of its obligations herein arising from any event beyond Seller's control, whether or not foreseeable by either party, including but not limited to, delays of suppliers,



labor disturbance or strike, war, terrorism, epidemic, pandemic, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, inability of Seller to obtain materials, shortages of materials, and other causes or events beyond Seller's control, whether or not similar to those enumerated above.

15. ORDERS

(a) Each Buyer order for Products is subject to acceptance in writing by Seller. No order will vary these terms.

(b) Order Changes - Buyer is liable for the costs of any changes to the goods, services, delivery schedule or specifications requested by Buyer and agreed to by Seller including, but not limited to, cancellation or restocking charges, non-recurring engineering costs and other expenses, tooling and fixture charges, re-certification charges, re-work, wastage, licensing fees and disassembly labor costs.

(c) NCNR- All Products and goods manufactured for Buyer, including all special materials and supplies necessary to perform the work specified, are non-cancelable and non-returnable ("NCNR"), unless specified in writing by Seller.

16. TERMINATION

Except as otherwise agreed in writing, Buyer shall not have the right to terminate or reschedule all or any portion or installment of the Products covered by this contract without the written consent of Seller.

17. BUYER'S DEFAULT

Payment as required by the terms of this contract must be made when due regardless of any claim by Buyer. Failure by Buyer to pay the purchase price when due, or otherwise to perform this contract, shall give Seller the unlimited right, without liability, to take possession of the Products, with or without notice, and to have all of the remedies of a secured party under the Uniform Commercial Code of the State of New York. In addition, Seller, at its option by giving written notice to Buyer of its election to do so, may, cancel any undelivered portions thereof and/or demand immediate payment of all outstanding bills of Buyer. All rights and remedies of Seller shall be cumulative and may be exercised successively or concurrently without impairing Seller's security interest in the goods. Buyer agrees to pay Seller reasonable attorneys' fees and legal expenses incurred by Seller in exercising any of its rights and remedies upon default in such amount as is permissible under law. All the foregoing is without limitation or waiver of any other rights or remedies available to Seller according to law or otherwise.

18. DISCLAIMER FOR CRITICAL APPLICATIONS

Products are not intended or authorized for use in products surgically implanted into the body, for life support products or for other products for which a Product failure could cause personal injury or death. If Buyer or Buyer's customers use or permit the use of Products for such unintended or unauthorized uses, Buyer agrees to fully indemnify Seller, its officers, employees and distributors, from all liability related to such use, including attorneys' fees and costs.

19. LIMITATION ON ACTIONS

No action, regardless of form, arising out of this contract may be brought by either party more than one year after the cause of action arose, provided; however, in the case of non-payment, not more than two years from the date of last payment.

20. GOVERNING LAW AND VENUE

This contract shall be construed and interpreted in accordance with and governed by the laws of the State of New York, excluding its conflict of law rules. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement, and its application is expressly excluded. The Parties hereby agree that the state and federal courts with jurisdiction over



disputes arising in Erie County, New York will have exclusive jurisdiction over any matter arising under this Agreement. Notwithstanding the foregoing, Seller may, in its sole discretion, bring suit to enforce its rights under this Agreement in the venue and under the governing law of any jurisdiction in which action or inaction of the Supplier is sought or in which Seller-owned assets are located.

21. INTENTIONALLY LEFT BLANK

22. GENERAL

- (a) This contract contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating the subject matter thereof.
- (b) Buyer agrees to comply with all applicable export laws, regulations and orders with respect to, but not limited to, the United States Nuclear Regulatory Commission, International Atomic Energy Agency and any other known or unknown regulations. Specifically, but without limitation, Buyer agrees that it will not resell, re-export or ship, directly or indirectly, any Products or technical data in any form without obtaining appropriate export or re-export licenses. Buyer acknowledges that the applicable export laws, regulations and orders may differ from item to item and/or from time to time.
- (c) This contract may not be assigned, modified, or terminated without Seller's prior written consent, and any attempt to assign, modify or terminate without such consent shall be absolutely void.
- (d) No delay or omission to exercise any right, power or remedy accruing to Seller upon breach or default by Buyer under this contract shall impair any such right, power or remedy of Seller, or shall be construed as a waiver of any such breach or default, or any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.
- (e) No amendments to or modifications of the provisions of this contract will be valid and binding upon Seller unless in writing and signed by an authorized representative of Seller.