



SYSTRON DONNER INERTIAL, INC.  
General Terms and Conditions of Sale

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**Clause 1 – Definitions**

As used herein: "Seller" means Systron Donner Inertial Inc., 2700 Systron Drive, Concord, California 94518. "Buyer" means the party purchasing Product(s) from the Seller. "Product" means all articles, materials, work or services offered by the Seller and described in the accompanying quotation, acknowledgement, invoice, or other Seller form. "Order" means any purchase Order or contract issued by the Buyer for Products provided by the Seller. "Terms and Conditions" means these General Terms and Conditions of Sale.

**Clause 2 – Governing Terms; Acceptance of Terms and Conditions**

All purchases of Products by Buyer from Seller will be governed exclusively by these Terms and Conditions. Any conflicting terms contained in a discussion or another document (including but not limited to an Order) shall not apply unless mutually agreed to and confirmed in writing. If these Terms and Conditions are provided with any quote, proposal, or other offer to sell by Seller, Buyer's acceptance of such offer is hereby expressly limited to these Terms and Conditions. Seller objects to any additional or differing terms contained in any acceptance of such offers. Issuance of an Order for any Product or acceptance of or payment for any Product by Buyer constitutes Buyer's unqualified acceptance of these Terms and Conditions.

The quotation and any resulting Order shall be the exclusive agreement between the parties for

the Product, subject to these Terms and Conditions. Any of the following constitute Buyer's unqualified acceptance of the Terms and Conditions:

- (a) issuance or assignment of an Order for the Product;
- (b) acceptance of any Products under the Order; or
- (c) payment for any or all of the Products under the Order.

Additional or different terms or conditions proposed by the Buyer shall be void and of no effect unless accepted in writing by the Seller's authorized representative. No change in, modification of, or revision to these Terms and Conditions shall be valid unless in writing and signed by an authorized representative of Seller.

**Clause 3 – Delivery, Payment Terms and Prices**

Deliveries shall be FCA as per Incoterms 2010, Concord, California, either freight collect, on the Buyer's account or prepaid by the Buyer. Delivery times are set forth in the Seller's applicable quotation or acknowledgment. ARO time periods commence only upon receipt of Order at Seller's facilities. All delivery times are approximate only and are given to the best of Seller's knowledge based on conditions existing at the time of quoting, but are not guaranteed. Failure to make shipment as scheduled does not

constitute a cause for cancellation or for damages of any nature. All sales are net thirty (30) days from the date of invoice, unless Seller in its sole discretion requires payment in advance or upon delivery. Payment shall be made in United States currency in accordance with specific instructions contained in the invoice. Late payments will accrue interest on the outstanding balance at the rate of 1.5% per month or the maximum rate allowed by law, whichever is less. In the event of a failure by Buyer to pay an invoice in accordance with the terms hereof, Seller shall have the right to withhold shipment under the applicable Order or any other Order.

Prices quoted by Seller apply only if the quantity of Product ordered is released within twelve (12) months and deliveries made to Buyer within twelve (12) months of Seller's receipt of Buyer's Order. Otherwise, Seller may terminate this Order by written notice to Buyer. Buyer shall be responsible for immediate payment of all costs incurred by Seller in connection with said termination, as well as cancellation charges and a reasonable profit thereon.

#### **Clause 4 – Shipment**

Title to all purchased material and risk of loss therefor is passed from Seller to Buyer at the time of shipment from Seller's facility. Unless otherwise agreed upon in writing, all purchased material will be shipped uninsured. Seller may request partial shipment and invoice therefor.

#### **Clause 5 – Delays**

Seller shall not be liable for delay in delivery or for failure to manufacture due to force majeure or causes beyond its reasonable control, including but not limited to acts of God, acts of government, acts of civil or military authority, acts of Buyer, application of U.S. Government priorities, Government delays in granting export licenses, fires, strikes, floods, war, terrorism, riot or civil commotion, delays in transportation, or difficulty in obtaining necessary labor or materials. In the event of any such delay, date of delivery shall be extended for a period of time equal to that lost by reason of the delay.

#### **Clause 6 – Changes**

Once an Order has been accepted or acknowledged by Seller, Buyer may not make any changes to said Order (including without limitation changes in quantity, type of Products ordered, designs or specifications, method of

shipment or packaging, or time or place of delivery) without the Seller's written consent, which may be withheld at Seller's sole discretion. Notwithstanding the foregoing, in no event shall Seller consent to any changes (a) requested within ninety (90) days of the scheduled delivery date, or (b) to Orders for custom or made-to-order Products.

If any permitted change causes an increase or decrease in the cost and or the time required for the performance of the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this article will be made in writing within thirty (30) days from the date the Seller becomes aware of the change.

Claims for price adjustment based on quantity discounts in lieu of costs shall not be denied when such claims are for Products which have been sold as commercial items or which are based on off-the-shelf commercial items. If Buyer requests large quantity pricing and initially orders below the quantity, Buyer will then purchase the smaller quantity at the pricing specified for the smaller quantity, and the Order shall be modified in writing accordingly.

#### **Clause 7 – Inspection and Acceptance**

Any review of items that are subject to customer source inspection shall be limited to final test data on a non-interference basis. Products delivered to Buyer will be deemed finally inspected and accepted by Buyer unless Buyer provides Seller a written notice of rejection within five (5) days after the date of delivery.

#### **Clause 8 – Tooling and Designs**

All tooling, molds, fixtures, specifications, drawings, designs, data, information, methods, patterns, descriptions, programs, software, ideas and/or inventions made, used, conceived, developed or acquired by Seller incidental to its performance hereunder and all patent, trade-secret, know-how, copyright or other proprietary rights therein, shall be the exclusive property of Seller and no part of the purchase price hereunder shall be deemed applicable to the foregoing items.

#### **Clause 9 – Security Interest**

Seller shall retain a security interest in the goods (and/or replacements) delivered hereunder and

in the proceeds from the sale or disposition thereof, until Buyer has made payment in full for such goods. Buyer shall, upon request by Seller, execute all documents (such as UCC-1 Financing Statements) necessary to perfect such security interest. Seller has the right, upon demand, to repossess goods delivered hereunder if Buyer fails to make timely payment.

#### **Clause 10 – Taxes**

Prices do not include sales or excise tax, VAT, duties or other governmental charges resulting from this transaction or the manufacture, sale, ownership, possession, or use of the Products, all of which must be paid by Buyer unless Buyer is in possession of a tax exemption certificate acceptable to the taxing authorities.

#### **Clause 11 – Warranty**

Seller warrants that the Products will be free from defects in material and workmanship and conform substantially to Seller's applicable specifications (or other specifications mutually agreed to by the parties in writing) for a period of one (1) year from the date of delivery ("Warranty Period"), when operated under normal conditions and in accordance with their applicable specifications. For any breach of this warranty, Seller will, at its option and expense and as its sole obligation, and as Buyer's exclusive remedy, repair, replace, credit, or refund any defective Product returned to Seller during the Warranty Period, provided that an examination by Seller discloses to Seller's reasonable satisfaction that a defect is covered by this warranty. This warranty does not apply to any Products that have been:

- (a) subject to misuse, neglect, or abuse,
- (b) improperly installed or maintained, or
- (c) repaired or altered by anyone other than Seller.

If a Product does not conform to the foregoing warranty, it may be returned to Seller only if Buyer obtains Seller's return material authorization ("RMA"). All such Product returned to Seller must be separately packaged, freight prepaid, and marked to as to clearly identify the shipment. Shipping charges shall be paid by Seller only if the Products returned are determined by Seller to be defective. If Seller determines that such returned Products are not defective, all shipping charges shall be paid by

Buyer. In no event shall Seller be responsible for damage to or malfunction of interface of associated equipment or for costs of packing, inspection, labor charges or any other related costs in connection with returned Products. Failure to adequately identify particular shipments, or to prepay freight, or the commingling of nonconforming Products from more than one shipment, or the failure to advise Seller of the possible breach of warranty within one (a) year of the date of delivery of the Product to Buyer, shall terminate any and all of Seller's obligations with regard to the Products.

The warranty period for Products repaired or replaced under this warranty shall be limited to the components repaired or replaced and shall run for a period of one hundred and eighty (180) days from the date of delivery or the balance of the original one (1) year Warranty Period (excluding the time the Products were out of service and in Seller's plant), whichever is longer. EXCEPT AS STATED IN THIS SECTION, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT OR OF ANY OTHER KIND.

#### **Clause 12 – Intellectual Property Rights**

Seller retains all intellectual property rights in the Products and any technical data provided to Buyer. No license, express or implied, in such property rights or data is granted under these Terms and Conditions.

#### **Clause 13 – Export Compliance**

All shipments hereunder shall at all times be subject to the export control laws and regulations of the United States and any amendments thereto. Buyer agrees that it shall not make any disposition of U.S. origin Products purchased from Seller, by way of transshipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination specified on Order or declared as the country of ultimate destination on Seller's invoices, except as said laws and regulations may expressly permit.

Buyer shall indemnify and hold Seller harmless from and against any liability claims, demands or expenses (including attorneys or other professional fees) arising from or relating to Buyer's noncompliance with U.S. export laws. Buyer shall be responsible for all losses, costs, claims, cause of action, damages, liabilities and

expense including and/or settlement and court costs arising from any act or omission of Buyer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

Seller, at its sole discretion, may obtain export license(s) or other appropriate export authorization on behalf of the Buyer. If Seller elects to obtain such export authorization on behalf of the Buyer it may be based upon Buyer using a freight forwarder designated by the Seller and/or paying additional mutually agreeable fees for obtaining such authorization. Buyer agrees to provide to Seller the necessary end-user statements and other required information for the license application. Seller shall not be liable if any government authorization is delayed, denied, revoked, restricted or not renewed, in which event Buyer's sole and exclusive remedy shall be a refund of any payments which Buyer has made for the Products.

#### **Clause 14 – Excluded Parties**

Buyer shall immediately notify Seller if it is or becomes listed on any Excluded or Denied Party List of an agency of the U.S. Government or its export privileges are denied, suspended or revoked.

#### **Clause 15 – Government Contracts**

If any purchase order indicates that the purchase is being made for use under a U.S. Government Contract, any terms and conditions of such Government contract which are intended to be included herein must be set forth in a separate written document signed by an authorized representative of Seller in order to be binding. Only those terms and conditions which Seller agrees to in writing and are made mandatory by federal statute or regulation for inclusion in fixed price supply contracts and subcontracts covering standard commercial proprietary items sold to the public at commercial prices shall apply.

#### **Clause 16 – Government Restricted Rights**

The Products if software are "commercial items," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 and is provided to the U.S. Government only as a commercial end item.

Any technical data provided with any Product is commercial technical data as defined in 48

C.F.R. 12.211. Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4, and 48 C.F.R. 252.227-7015, all U.S. Government End Users acquire the Products with only those rights set forth herein.

#### **Clause 17 – Federal Contract Provisions**

If this Order is subject to Federal Contract Provisions as may be required by law, Seller will accept the inclusion of those provisions, but only to the extent that the clauses are required, as demonstrated by the Buyer's representative and as confirmed by the Seller's authorized representative. Any such provisions that do not apply shall be self-deleting.

#### **Clause 18 – Confidential Information of Seller**

Any information provided to Buyer by Seller shall be deemed "Confidential Information" and shall remain the property of Seller. Confidential Information may include, without limitation, Seller's trade secrets; financial information, including pricing; technical information, including research, development, procedures, algorithms, data, designs and know-how; business information, including operations, planning, marketing interests, and products; the existence of the Order or these Terms and Conditions; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by Buyer. Buyer agrees to comply with the terms of any Nondisclosure Agreement with Seller or a third party which covers Seller's Confidential Information, and to comply with all proprietary information markings and restrictive legends applied by Seller to anything provided hereunder to Buyer. In the event that no such Nondisclosure Agreement exists, the following terms shall apply: For a period of two (2) years following its receipt of Confidential Information, Buyer shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information. Buyer shall not disclose the Confidential Information without the prior written consent of Seller. This provision shall not apply to Confidential Information which is (a) already known by Buyer without an obligation of confidentiality, (b) publicly known or becomes publicly known through no unauthorized act of Buyer, (c) rightfully received from a third party

(other than an affiliate or customer of Seller) without an obligation of confidentiality, (d) approved by Seller in writing for disclosure, or (e) required to be disclosed pursuant to a requirement of a governmental agency or law so long as Buyer provides Seller with timely prior written notice of such requirement.

**Clause 19 – Limitation of Liability**

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR LOST PROFITS OR LOSS OF USE OR DAMAGE TO ASSOCIATED EQUIPMENT, REGARDLESS OF THE THEORY OF LIABILITY RESULTING FROM ANY DEFECT ARISING FROM ANY PRODUCT, OR FROM ANY BREACH OF CONTRACT (EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SELLER'S TOTAL CUMULATIVE LIABILITY UNDER THIS CONTRACT FOR ANY DAMAGES TO BUYER OR ANY THIRD PARTY, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE PRODUCT.

**Clause 20 – Termination**

Either party shall have the right to terminate an Order for cause as a result of the failure of the other party to comply in any material way with the Order or these Terms and Conditions and to remedy such failure within thirty (30) calendar days after written notice of such failure given by the non-defaulting party.

**Clause 21 – Governing Law and Venue**

These Terms and Conditions will be governed by and construed under Illinois law, without regard to the state's conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding relating to these Terms and Conditions or the sale or delivery of any Product under these Terms and Conditions must be brought in any state or federal court located in Cook County, Illinois.

**Clause 22 – Arbitration**

Any controversy or claim arising out of, in connection with, or relating to the agreement hereunder shall be resolved by binding arbitration in Chicago, Illinois, pursuant to the rules then pertaining of the American Arbitration Association.

**Clause 23 – General**

All waivers must be in writing. Any waiver or failure to enforce any of these Terms and Conditions on one occasion will not be deemed a waiver of any of the other Terms and Conditions on any other occasion. These Terms and Conditions constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior or simultaneous agreements, understandings, and communication, whether written or oral.

Except as required by law, no public release of any information, or confirmation or denial of same, with respect to this Order or the subject matter hereof, shall be made by Buyer without the prior written approval of Seller's authorized representative.

Buyer shall not publish, distribute, or use any information developed under or about the existence of this Order or these Terms and Conditions, or use the Seller's name (or the name of any division, affiliate, or subsidiary thereof), logo, trademark, service mark, or trade dress for the purpose of advertising, making a news release, creating a business reference, creating website content or to endorse products or services without prior written approval of Seller.

If any provision of this Order or the Terms and Conditions is or becomes void or unenforceable by force or operation of law, all other provisions shall remain valid and enforceable.

These Terms and Conditions shall be binding on the parties and their respective successors in interest. Buyer shall have no right to assign these Terms and Conditions or the Order without Seller's prior written consent.

Additional or differing terms and/or conditions proposed by Buyer or included in Buyer's Order, are hereby objected to by Seller and have no effect unless expressly accepted in writing by Seller. By placing its Order, Buyer accepts this provision along with these Terms and Conditions.