



TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** Bowmar, LLC, ("Seller") expressly limits its acknowledgment and acceptance of any Purchase Order to the terms set forth on the face and reverse side of this agreement (herein "Terms of Sale") and the terms and conditions contained in the Purchase Order which do not contradict, conflict with, and are not inconsistent in any respect whatsoever with the Terms of Sale. All other terms and conditions of the Purchase Order are hereby rejected and superseded by the Terms of Sale. Failure of Seller to object to specific provisions of the Purchase Order or other communications from Buyer shall not be deemed an acceptance of such provisions or a waiver of the terms of sale. Seller expressly conditions its acceptance of the Purchase Order on the adoption by Buyer of the Terms of Sale. Failure of Buyer to object to any of the Terms of Sale prior to shipment of the goods which are the subject of the Purchase Order (herein "**Goods**") shall be deemed by Seller to be an adoption by Buyer of the Terms of Sale. The Seller reserves the right to at any time accept or reject any Purchase Order.
2. **TERMS.** Payment terms are subject to credit verification. The Seller reserves the right to require payment in advance or C.O.D. for full or partial amount. When partial shipments are made, payments shall become due in accordance with the designated terms of invoices submitted therefore. Unless otherwise specified, terms are cash Net 30 days from date of shipment with approved credit. A penalty of 1.5% per month will be assessed against overdue invoices.
3. **CHANGES.** Seller reserves the right at any time, by written notice, to suspend performance hereunder and/or make changes in any one or more of the following: (a) specifications, designs, drawings, and data incorporated herein; (b) shipping and packing instructions; or (c) place and time of performance or delivery. If any such change increases the cost of or the time required for performance of this Invoice Agreement, an equitable adjustment to the purchase price and/or delivery schedule shall be negotiated, and this Invoice Agreement shall be modified in writing accordingly. Any claim by Buyer for adjustment under this clause is waived unless asserted in writing within ten (10) days from Buyer's receipt of the change notice.
4. **SHIPMENT AND RISK OF LOSS.** All shipments will be made F.O.B. the Seller's manufacturing facility unless otherwise agreed. In the absence of specific instructions, the Seller will select the carrier. Title and risk of loss to the material shall pass to the Buyer upon delivery of the material by the Seller to the carrier or delivery service. Thereupon, the Buyer shall be responsible for the material. Products held for the Buyer, or stored for the Buyer, shall be at the risk and expense of the Buyer. If at the request of the Buyer, shipments are postponed more than 30 days, invoices therefore shall become due 30 days after notice that products are ready for shipment unless otherwise specified. Shipping dates are approximate. Seller will use its best efforts to fill all orders. However, if any conditions arise which prevent compliance with delivery schedules; Seller shall not be liable for damages, general, consequential, or otherwise, or for failure to give notice of any delay.
5. **TAXES.** Unless otherwise specified, the prices shown do not include any taxes or transportation charges. Buyer agrees to pay Seller the amount of any Federal, State, City or other tax which Seller may be required to pay on account of the ownership at the place of installation, or the manufacture, transportation, sale, or use of the material and equipment which is the subject of this contract. Buyers who are exempted from any such taxes must provide the Seller with applicable documentation at the time of order.
6. **ACCEPTANCE OF GOODS.** The obligations, liabilities, and responsibilities of Seller and the remedies of Buyer in the event of a claimed breach of warranty or other claim with respect to the quality of the Goods shall be exclusively and solely limited to the following procedures. Buyer shall not be entitled to rely upon or assert any alleged breach of warranty of the Goods which could have been detected by a careful, complete, and diligent inspection of the Goods immediately upon their arrival at the Buyer's premises ("**Initial Inspection**") unless Buyer makes such an Initial Inspection and notified Seller in writing within 3 business days after delivery of the Goods to the Buyer of any alleged material breach of warranty in the Goods. Upon such notice, Seller shall have the option, during the 10 days after receiving such notice, of having a representative inspect and test the Goods and their use at either the Seller's or the Buyer's plant with the full cooperation and necessary help of the Buyer and its agents and employees, and either confirm or disprove the existence of the breach claimed by the Buyer. If such test cannot be conducted because of a failure or lack of such cooperation or help of Buyer or its agents or employees, then said warrant shall null and void and Seller shall not be bound thereby or by any other warranty, expressed or implied, arising by contract or by operation of law. If such test shows the Goods to be as warranted, (i) Buyer shall reimburse Seller on demand for all expenses and costs incurred by Seller in the inspection and testing of the Goods including travel costs and managerial time at a reasonable per them rate; and (ii) Buyer shall deliver to Seller representative a written acknowledgement of the confirmation of the Goods with the warranty. If Buyer refuses to acknowledge such fact, it may, at its own expense, have an independent testing agency, satisfactory to Seller, inspect and test the Goods in accordance with Seller instructions, specifications, and directions for use. If Seller elects not to inspect or test the Goods upon receipt of the notice of alleged breach, or if the representative from Seller or the independent testing agency, as the case may be, concludes that the Goods do not conform to the limited express warranty provided herein in Paragraph 12 and a certified written report to that effect is submitted to Seller, then, upon (i) written notice by Buyer to Seller, and (ii) delivery to Seller at Buyer's expense and according to Seller's directions and instructions of that portion of the Goods which are materially nonconforming or defective, Seller may, at its option and sole discretion, either (i) replace the nonconforming or defective portion of the Goods or (ii) refund the purchase price paid for that nonconforming or defective portion. Nothing in this section on remedies shall impose any liability or obligation of any type, nature, or description upon Seller if Seller has not received from Buyer payment in full for the Goods.
7. **OWNERSHIP OF INTELLECTUAL PROPERTY.** Unless otherwise expressly provided, the Seller shall retain title to and possession of all intellectual property rights including, but not limited to, patents, trademarks, copyrights, models, patterns, jigs, fixtures, and tools made for or obtained for the furnishing of this order. To the extent the Buyer and the Seller have executed a nondisclosure agreement, the Buyer and the Seller hereby acknowledge that this agreement supplements, but does not alter or supercede, the parties' obligations pursuant to such nondisclosure agreement.
8. **INDEMNIFICATION.** The Buyer shall indemnify and hold Seller harmless from all fines, suits, proceedings, claims, demands, or actions of any kind or nature, or from any third party, in each case arising or growing out of, or otherwise connected with, the Buyer's business, including injury or damage to person or property which is claimed to be caused by or result from the Goods, whether or not arising out of defective material, poor workmanship, negligence, breach of warranty, or any other cause. Buyer shall, at Seller's request and at Buyer's own cost and expense, defend any and all claims, suits, and actions which may be brought against Seller either alone or in conjunction with others by any person, firm, or corporation whose rights to the Goods come from Buyer, or any person whose rights were derived from Buyer. Buyer shall, upon Seller demand, satisfy, pay, or otherwise discharge any and all judgments or fines that may be recovered against or imposed upon Seller in any such suit or action. Seller shall have the option, without any obligation to do so, to participate in any litigation arising in connection with the Goods, through its own or its insurer's attorneys, at its or its insurer's expense.
9. **PATENT INDEMNITY.** The Seller agrees to indemnify the Buyer and hold the Buyer harmless from all legal expenses which may be incurred as well as all damages and costs which may finally be assessed against the Buyer in any action for infringement of any United States patent by those specific items delivered hereunder. The Buyer agrees to promptly inform the Seller of any claim for liability made against the Buyer with respect to such items and the Buyer agrees to cooperate with the Seller in every way reasonably available to facilitate the defense against any such claim.
10. **COMPLIANCE WITH LAWS.** The Seller agrees to comply with all applicable state and federal laws, rules and regulations, including those affecting or limiting prices, production, purchase, sales, use or inventory of materials. If the material or articles are to be used making parts or equipment to be furnished to the United States Government, the Seller agrees to comply with the applicable requirements of such contract with respect to US Export laws, International Traffic & Arms Regulations, secrecy, use of convict labor, employment of aliens, non-discrimination, plant protection, espionage, sabotage, Fair Labor Standards Act of 1938, as amended, including Section 12 (a) thereof, as amended, Walsh-Healey Act, and other provisions relating to hours and conditions of work, if and when applicable.
11. **CANCELLATIONS.** Orders for Product may not be rescheduled within 60 days of the estimated shipment date [due date]. Orders for Products may be rescheduled between 61 and 90 days, from the estimated shipment date [due date] with Sellers approval. All orders, are non-cancelable, non-returnable, (outside of warranty provisions), and may not be rescheduled without approval of Seller. In the event that Seller approves cancellation, Buyer is responsible for any and all costs associated with said cancellation. All cancellations will at a minimum, be subject to a 25% restocking fee.
12. **WARRANTIES. OTHER THAN AS SPECIFICALLY SET FORTH ON ATTACHMENT A TO THIS AGREEMENT, THE SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED AS TO THE PERFORMANCE OF ANY OF ITS PRODUCTS IN BUYER'S APPLICATIONS. THE SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF AN OFFICER OF THE SELLER. FOR PURPOSES OF THE PRECEDING SENTENCE, LIFE SUPPORT DEVICES OR SYSTEMS ARE DEVICES OR SYSTEMS WHICH (1) ARE INTENDED FOR SURGICAL IMPLANT INTO THE BODY, OR (2) SUPPORT OR SUSTAIN LIFE AND WHOSE FAILURE TO PERFORM WHEN PROPERLY USED IN ACCORDANCE WITH INSTRUCTIONS FOR USE PROVIDED IN THE LABELING CAN BE REASONABLY EXPECTED TO RESULT IN A SIGNIFICANT INJURY TO THE USER.**
13. **FORCE MAJEURE.** Neither party shall be responsible for its failure to perform due to acts of God, fire, theft, war, riot, embargoes, acts of civil or military authorities, or other causes beyond its reasonable control. If delivery is to be delayed by such contingencies, Seller shall immediately notify Buyer in writing and Buyer may either (a) extend the time of performance or (b) terminate the uncompleted portion of the Purchase Order at no cost to Buyer.
14. **LIMITATION OF LIABILITIES.** Seller shall not be liable for any loss, damage, cost of repairs, or incidental or consequential damages of any kind whether or not based upon obligations accepted by Seller under Seller's warranty or on contract, negligence, or strict liability arising in connection with the design, manufacture, sale, use, or repair of the products. In no event will Seller be liable to buyer for more than the purchase price of the products sold hereunder. Buyer's exclusive remedy against Seller in any action taken by the former against the latter shall be for recovery of the price of the products sold by Seller to Buyer.
15. **ARBITRATION.** Any controversy or claim arising out of or relating to this Invoice Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, in the locale of Phoenix, Arizona, USA. In no event shall the demand for arbitration be made after the date when such dispute would be barred by the applicable statute of limitations. The parties hereby grant the arbitrator(s) the authority to grant either side costs and/or attorneys' fees. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.]
16. **COLLECTION EXPENSES.** In addition to all other remedies provided herein, Buyer shall reimburse Seller on demand for all costs and expenses, including reasonable attorney's fees and fees of collection agencies incurred by Seller in collecting the purchase price for the Goods or any other amounts owed hereunder.
17. **DOMESTIC ORDERS FOR EXPORT.** Domestic buyers will secure all export licenses and permits required by the United States Government for resale of the products to foreign customers. Buyer agrees to comply with all US Export laws including, but not limited to, International Traffic & Arms Regulations.
18. **ENTIRE AGREEMENT.** The provisions hereon and on accompanying papers, if any, signed by Seller constitute all the terms and conditions agreed upon by the parties and shall replace and supersede any provisions on the face and reverse side of the Purchase Order or any attachment thereto, or any prior or general agreement inconsistent with the provisions hereof. No modification shall be valid unless in writing and duly signed by a person authorized by the Seller.
19. **CONTROLLING LAW.** This agreement is to be construed and interpreted according to the laws of the State of Arizona, U.S.A. without reference to its conflict of law provisions. The parties specifically exclude from application to this Invoice Agreement the United Nations Convention on Contracts for the International Sale of Goods. If a claim is asserted in any legal proceeding, the Buyer agrees to irrevocably submit to the jurisdiction of the Superior Court of the State of Arizona and the Federal District Court for the District of Arizona, and irrevocably agree that venue for any action or proceeding shall be in Maricopa County, Arizona. Both parties waive any objection to the jurisdiction of these courts or to venue in Maricopa County, Arizona. The provisions contained in this Invoice Agreement that by their sense and context are intended to survive the performance by either party, whether or not expressly identified as such, will so survive the completion of performance or the termination of this order.
20. **SEVERABILITY.** All provisions of this agreement shall be considered as separate terms and conditions. In the event that any provision shall be held illegal, invalid, or unenforceable, all other provisions hereof shall remain in full force and effect.
21. **STANDARD OF BUSINESS ETHICS AND CONDUCT.** By the acceptance of the document, and during the course of business between the buyer and Bowmar, LLC, the buyer agrees to abide and comply with Bowmar, LLC's Code of Ethics, available from Bowmar, LLC.



Bowmar, LLC

PRODUCT WARRANTY

Products manufactured by Bowmar, LLC, ("Seller"), are warranted to be free from defects in material and workmanship. Seller's "standard products" are warranted to be in compliance within the specifications as defined by the Seller. In the event that any such defect or noncompliance appears within the periods identified in Appendix A hereto, Seller shall, at its sole option, repair or replace the Product, or refund to Buyer the purchase price of the product. THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty does not extend to any product which has been subjected to misuse, neglect, accident, operation outside the Product's maximum ratings, incorrect wiring, improper installation, use in violation of instructions furnished by Seller, or which has had its serial number or any part thereof altered, defaced, or removed, or which has been opened or disassembled.

- A. OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED AS TO THE PERFORMANCE OF ANY OF ITS PRODUCTS IN BUYERS APPLICATION, PRODUCT, SERVICE OR PROGRAM. THE SELLER'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF AN OFFICER OF THE SELLER. FOR PURPOSES OF THE PRECEDING SENTENCE, LIFE SUPPORT DEVICES OR SYSTEMS ARE DEVICES OR SYSTEMS WHICH (1) ARE INTENDED FOR SURGICAL IMPLANT INTO THE BODY, OR (2) SUPPORT OR SUSTAIN LIFE AND WHOSE FAILURE TO PERFORM WHEN PROPERLY USED IN ACCORDANCE WITH INSTRUCTIONS FOR USE PROVIDED IN THE LABELING CAN BE REASONABLY EXPECTED TO RESULT IN A SIGNIFICANT INJURY TO THE USER.
- B. Products fabricated by Seller carry a warranty as listed in Appendix A. Upon failure within this warranty period, adjustment will be, at Seller's discretion, in the form of credit, replacement, or repair. Any product repaired or replaced shall be subject to that portion of the original warranty remaining at the time Seller received notice of failure. For units repaired outside of the original warranty, at Buyer's expense, the month warranty applies only to that portion of the product that is repaired or replaced.
- C. If, within the stated warranty period, any product fails to function to its specification, the following procedure shall be followed:
 - 1. WRITTEN notice of product failure must be given to Seller prior to warranty expiration, which will establish the date of failure. Written notice will include a detailed mode of failure including environmental conditions of failure.
 - 2. Products returned to Seller will be promptly examined, and:
 - a) If such examination proves them to be defective within this warranty, adjustment will be made as stated in Section B.
 - b) If such examination establishes that they are not defective under this warranty, an examination charge may be applicable (charges will be quoted in advance upon request).

This warranty expires, as listed in Appendix A, after the original date of the product's shipment by Seller, not including repair or replacement time.

INSURANCE PROCEDURES

In the event that the product shipped appears to have been damaged in transit, the Buyer must notify the CARRIER and request an adjustor to inspect the shipment. The Buyer shall also retain all original shipping containers for inspection and look for the following:

- 1. Evidence of rough handling
- 2. Broken or bent leads
- 3. Parts out of alignment
- 4. Surface damage

LIMITATION OF LIABILITY

SELLER'S LIABILITY ARISING FROM OR RELATING TO THE SUPPLY OR USE OF THESE PRODUCTS, REGARDLESS WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE LIMITATIONS STATED HEREIN. SELLER SHALL NOT BE LIABLE TO THE PURCHASER OR ANY OTHER PARTY FOR ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO INSTALLATION COSTS, REMOVAL COSTS, LOST PRODUCTION, LOST SALES OR LOST PROFITS) ARISING DIRECTLY OR INDIRECTLY FROM THE USE OR INABILITY TO USE THE PRODUCTS. BUYER'S REMEDIES ARE HEREBY LIMITED, AT THE SELLER'S SOLE OPTION, TO THE REPAIR OR REPLACEMENT OF THE PRODUCT, OR A REFUND OF THE PURCHASE PRICE OF THE PRODUCT. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE AMOUNT OF THE PURCHASE PRICE OF THE PRODUCTS SOLD HEREUNDER. Such limitations apply even if Seller has been advised of any such loss, damage or expense.

**PRODUCT WARRANTY
APPENDIX A**

Warranty on products is as follows from date of shipment:

	Electro-Mechanical <u>Products</u>
Commercial Product:	1 year
Industrial Product:	1 year
Military Product:	1 year
Custom Product:	TBD