



TERMS & CONDITIONS OF SALE

The following terms and conditions govern all sales of, services, products and materials ("Goods") by OmniPhase Research Laboratories, Inc. d.b.a. OmniPhase Defense Systems ("OmniPhase"). No order shall constitute a contract unless and until accepted in writing by OmniPhase.

1. TERMS AND CONDITIONS TO GOVERN

Acceptance of orders by OmniPhase is based on the express condition that Buyer agrees to all of the terms and conditions expressed herein. These terms and conditions will govern unless Buyer notifies OmniPhase in writing of the unacceptability with five (5) days from the receipt of these terms and conditions. Buyer's failure to object to these terms and conditions within five (5) days, or acceptance of delivery by Buyer, will constitute Buyer's assent to said terms and conditions. These terms and conditions represent the final and complete agreement of the parties, and no terms or conditions in any way modifying or changing the provisions stated herein shall be binding upon OmniPhase unless made in writing and signed and approved by an officer or other authorized person at OmniPhase. No modification of any of these terms shall be effected by OmniPhase's shipment of goods following receipt of Buyer's purchase order or similar form containing terms and conditions additional to or different from the terms herein.

2. FORCE MAJEURE

Delay in delivery or non-delivery in whole or in part by OmniPhase shall not be a breach of this agreement if performance is made impracticable by the occurrence of any one or more of the following contingencies, the non-occurrence of which is a basic assumption on which this agreement is made: (a) Fires, floods or other casualties; (b) Wars, riots, civil commotion, embargoes, governmental regulations, or martial law; (c) OmniPhase's inability to obtain necessary materials (finished or otherwise) from its usual sources of supply; (d) Shortage of cars or trucks or delays in transit; (e) Existing or future strikes or other labor troubles affecting production or shipment, whether involving employees of OmniPhase or employees of others, and regardless of responsibility or fault on the part of the employer; and (f) Contingencies of manufacture or shipment, whether or not of a class or kind mentioned herein, not reasonably within OmniPhase's control.

3. TAXES

All taxes and excises of any nature whatsoever now or hereafter levied by governmental authority, whether foreign, federal, state, or local, upon the sale, use, or transportation of any goods covered hereby, shall be paid and borne by Buyer. Buyer is required to provide OmniPhase with an exempt use certificate for state sales taxes or at OmniPhase's option OmniPhase shall collect or the Buyer shall directly pay state sales tax and shall provide OmniPhase with proof of payment of taxes.

4. TITLE OF GOODS

Title of the goods shall pass to Buyer upon delivery thereof to the carrier. Delivery to carrier shall constitute delivery to Buyer, and thereafter the goods shall be at Buyer's risk of loss. Any claim by Buyer against OmniPhase for shortage or damage occurring prior to such delivery must be made within five (5) days after receipt of the goods and accompanied by original transportation bill signed by carrier noting that carrier received the goods from OmniPhase in the condition claimed by Buyer.

5. WARRANTY

Subject to the terms and conditions set forth below, OmniPhase warrants the goods to be free from defects in material (exclusive of material/components supplied by Buyer) and workmanship. This warranty shall extend for a period of twelve months from date of shipment.

OmniPhase's warranty does not apply if, and OmniPhase shall have no liability for goods returned by Buyer as to which OmniPhase's examination reveals that: (i) the goods have been exposed to unusual or excessive environmental, mechanical, electrical or thermal stress during the course of installation or use; (ii) the absolute maximum ratings are exceeded for any reason including, but not limited to, equipment variations, environment variations, the effects of changes in operating conditions due to variations in device characteristics, improper equipment design, improper device installation or application; (iii) goods malfunction is the result of misuse, abuse, improper installation or application, alteration, accident, or negligence in use, storage, transportation or handling or if the original identification markings on the goods have been removed, defaced or altered; (iv) goods are tested for Buyer by anyone other than OmniPhase unless such procedures have OmniPhase's prior written approval; or (v) the goods are classified as other than a commercial production unit, e.g. a design

OMNIPHASE RESEARCH LABORATORIES, INC

ADVANCED WIRELESS TECHNOLOGIES AND APPLICATIONS FOR MILITARY AND COMMERCIAL USE

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verification unit, sample, preproduction unit, developmental unit, prototype unit, incomplete (with notice) or "fallout" (i.e. out of specification with notice) unit. All warranty claims are subject to verification by OmniPhase.

The liability of OmniPhase hereunder is solely and exclusively limited to replacement, repair or credit at the purchase price at OmniPhase's option for any goods which are returned by Buyer during the applicable warranty period and which are found by OmniPhase to be subject to adjustment under this warranty. Buyer must notify OmniPhase of any warranty claim within ten (10) days of discovery of the basis therefore, and if Buyer fails to so notify OmniPhase by such time, Buyer shall be deemed to have waived such warranty claim.

The foregoing warranties extend to Buyer only, and not to Buyer's customers or to users of Buyer's products. These warranties may not be transferred or assigned, and Buyer shall make no warranty with regard to the goods to any of its customers or other users of Buyer's products, and Buyer shall indemnify and hold OmniPhase harmless against any and all claims, demands, liabilities, losses, costs, fees, expenses, damages and injuries (including reasonable attorney fees) (collectively, "Claims") incurred by OmniPhase in connection with, or relating to, any such warranty made by Buyer. These warranties are the only warranties made by OmniPhase and shall not be enlarged by representations, descriptions, course of dealing, trade usage, rendering of technical advice, service, samples, models, or otherwise, and OmniPhase MAKES NO OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. CANCELLATIONS

OmniPhase reserves the right to require payment for the goods in advance, or satisfactory security, if the financial responsibility of Buyer is or becomes unsatisfactory to OmniPhase. If Buyer fails to make payment in accordance with the terms of this agreement, or any collateral agreement, or fails to comply with any provision hereof, OmniPhase may, at its option (and in addition to other remedies, that may be available at law or in equity), cancel any unshipped portion of this order, with Buyer remaining liable for all unpaid accounts. Goods cannot be returned and orders, once accepted, cannot be canceled without OmniPhase's prior written consent. If Buyer cancels an order, it will be responsible for all of OmniPhase's costs. If cancelled within 60 days of the proposed delivery date, customer shall be responsible for the full purchase price of the goods.

7. GOVERNING LAW

This agreement shall be deemed a contract made in the State of California and governed by the laws thereof. In the event of a dispute, the other party shall reimburse the prevailing party all reasonable legal expense.

8. DELIVERY

All deliveries will be made F.O.B. OmniPhase's plant, 3200 Highland Avenue, National City, CA 91950. Buyer shall be responsible for all shipping and handling costs. Delivery of the quantity of goods ordered +/- 10% within ten business days of the proposed date of delivery shall constitute timely delivery.

9. PATENTS/COPYRIGHTS

Without limiting Paragraph 5 above, OmniPhase makes no representation or warranty as to whether the goods infringe any patent, trademark, service mark or copyright or other intellectual property right (collectively, "Intellectual Property"), and Buyer shall indemnify and hold OmniPhase harmless against any and all Claims arising from any actual or claimed infringement of any Intellectual Property that arise by virtue of any use of the goods by Buyer or any of Buyer's customers or other users of Buyer's products, but only to the extent that any such infringement arises out of compliance with specifications furnished to OmniPhase by Buyer.

10. LIMITATION

IN NO EVENT SHALL OmniPhase BE LIABLE FOR PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, ANTICIPATED OR LOST PROFITS, INCIDENTAL DAMAGES OR LOSS OF TIME OR OTHER LOSSES OR EXPENSES INCURRED BY BUYER OR ANY THIRD PARTY, DIRECTLY OR INDIRECTLY, ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER OmniPhase HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. MOREOVER, IN NO EVENT SHALL OMNIPHASE'S TOTAL LIABILITY (TOGETHER WITH THE LIABILITY OF ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) EXCEED THE AMOUNT THERETOFORE PAID BY BUYER IN RESPECT OF THE GOODS HEREUNDER.

11. EXPORT RESTRICTIONS

Buyer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable government and other competent authorities. Buyer will indemnify and hold OmniPhase harmless for any violation or alleged violation by Buyer of such laws, rules, policies or procedures. Buyer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the goods or any technical data (including processes and services) received from OmniPhase, without first obtaining any license required by the applicable government, including without limitation, the United States Government and/or any other applicable competent authority.

Buyer also certifies that none of the goods or technical data supplied by OmniPhase hereunder will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

12. SEVERABILITY

If any part, term or provision of these Terms and Conditions shall be held illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over these Terms and Conditions, the validity of the remaining portions of these Terms and Conditions shall not be affected thereby.

13. PROPRIETARY INFORMATION AND TECHNOLOGY RIGHTS

Any documentation, data, or information of any kind that is marked "Confidential" or "Proprietary" or that would otherwise reasonably be considered as such under the circumstances ("Proprietary Information") supplied by OmniPhase to Buyer shall be deemed proprietary to OmniPhase and treated as confidential by Buyer. Without limiting the foregoing, except as expressly agreed to by OmniPhase in writing, the structure of, and growth technology and fab processes relating to, the goods shall constitute Proprietary Information of OmniPhase. OmniPhase retains for itself all proprietary rights in and to all Proprietary Information. Buyer shall not disclose, without OmniPhase's written consent, any Proprietary Information to any other person, or use Proprietary Information for any purpose other than in connection with its business relationship with OmniPhase and its use of the goods. OmniPhase may, at its sole option, require Buyer to execute a separate confidentiality agreement acceptable to OmniPhase as a condition to providing any documentation or data that it considers proprietary or confidential. All derivatives of, improvements to, or technological advances with respect to, the Proprietary Information or other technology disclosed by OmniPhase to Buyer, regardless of whether embodied in the goods shall belong to OmniPhase and Buyer shall have no rights therein. Moreover, Buyer shall use the goods only as a component its products and shall not reverse engineer or otherwise disassemble or decompile the goods. Any improvement to the goods developed through the use of any Proprietary Information shall be the sole property of OmniPhase, and Buyer hereby assigns to OmniPhase all right, title and interest therein and shall fully cooperate with and assist OmniPhase in perfecting such ownership rights, including any patent applications relating thereto.

14. SALE CONVEYS NO LICENSE

The sale of goods hereunder does not convey any license under any patent, copyright, trade secret or other proprietary right with respect to which OmniPhase can grant licenses. OmniPhase expressly reserves all of its rights with respect to such patent, copyright, trade secret and/or other proprietary rights.