

Terms and Conditions of Sales

HERLEY-CTI, INC., GENERAL TERMS AND CONDITIONS OF SALE

Herley-CTI, Inc., designated below as "HERLEY-CTI" or Seller accepts and will fill orders only upon the terms and conditions appearing below.

1. **AGREEMENT:** Any of the terms and provisions of Buyer's order which are inconsistent with the terms and provisions hereof shall not be binding on HERLEY-CTI and shall not be considered applicable to the sale of the products mentioned herein. Unless Buyer notifies HERLEY-CTI in writing to the contrary within ten (10) days after receipt of this form, acceptance by Buyer of these terms and conditions shall be inferred and the shipment by HERLEY-CTI of the products covered hereby shall be deemed to be subject to the terms and conditions hereof. No modification hereof shall be valid unless expressly accepted in writing by an authorized representative of the Seller.
2. **PRICES:** Unless otherwise specified on the order, prices are for the specific quantity stated and do not include taxes, nor charges for transportation, engineering, documentation, special packaging, marking or testing (unless separate contract override). All prices are quoted and are payable in U.S. Dollars.
3. **CANCELLATION OR TERMINATION:** If the Buyer cancels or terminates the order in whole or in part, the following charges apply; (1) the price for completed products, (2) Cost of work in process, (3) raw material, (4) costs involved in the settlement of claims with subcontractors and of preparing a settlement proposal. (Cost is defined to include material, direct labor, overhead, material handling, selling, general and administrative expenses (SG&A) and profit.)
4. **QUANTITY DISCOUNTS:** When quantity price discounts are quoted, they are computed separately for each type of product or equipment, and are based on the quantity of each type ordered at any one time for immediate delivery (unless separate contract override). If any order is reduced or canceled, it is agreed that prices will be adjusted upward to the higher prices, if applicable, for the remaining quantity on order
5. **ORDER SCHEDULING:** Orders are to be scheduled for delivery within twelve (12) months from order date, or beyond with agreed price escalators, which will be applied.
6. **TAXES:** The prices quoted by HERLEY-CTI do not include sales, use, excise or other similar taxes. The Buyer shall pay, in addition to the prices quoted, the amount of any Federal, State, City, or other tax, import or export duty, tariff or customs charge levied by any jurisdiction either inside or outside the United States which is applicable to the sale of goods or performance of services by HERLEY-CTI or, in lieu thereof, the Buyer shall supply HERLEY-CTI with an appropriate tax exemption certificate.
7. **TERMS:** Unless otherwise stated, payment terms are net 30 days from date of invoice, subject to credit approval by HERLEY-CTI. Seller reserves the right to require payment in advance or C.O.D. or otherwise modify credit terms either before or after order acceptance of any order if for any reason Buyer's credit is or becomes unacceptable to



HERLEY-CTI. Pending correction of any unacceptable credit situation, HERLEY-CTI may withhold shipment without incurring any liability to Buyer. When partial shipments are made, payments therefore shall become due in accordance with the designated terms of the invoice. A service charge of 1 1/2% per month on the unpaid balance shall be imposed on all accounts not paid when due.

8. **SHIPMENT:** All shipments will be made F.O.B. the HERLEY-CTI factory unless otherwise specified. In the absence of specific instructions, HERLEY-CTI will select the carrier. Title to the material shall pass to the Buyer upon delivery thereof by HERLEY-CTI to the carrier or delivery service. Buyer is responsible for insuring shipment.
9. **DELIVERY:** Buyer acknowledges shipping dates are approximate. If Buyer's order does not cite desired delivery date(s) and/or does not expressly prohibit delivery in advance of schedule date(s), Buyer agrees that immediate delivery or partial delivery is acceptable. If conditions arise which prevent compliance with delivery schedules, HERLEY-CTI shall not be liable for any damage, general, consequential or otherwise, for delay in delivery, or for failure to give notice of delay, and such delay shall not constitute grounds for cancellation.
10. **CHANGES:** All change order requests must be submitted by the Buyer in writing and shall not be effective unless HERLEY-CTI consents in writing to the change, which consent may be withheld in their sole discretion, and under conditions which will indemnify HERLEY-CTI for any added costs of such changes. If any such change causes an increase or decrease in the Cost of or in the time required for performance of an order, an equitable adjustment shall be made in the order Cost, delivery schedule or both and the order shall be modified in writing accordingly.
11. **FORCE MAJEURE:** HERLEY-CTI shall not be liable for any failure to deliver, or delay in the delivery of, any goods or services due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, or inability to obtain materials, labor, components, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by the reason of such delay. In the event HERLEY-CTI's production is curtailed for any of the above reasons, HERLEY-CTI may allocate its production among its various customers in a commercially fair and reasonable manner.
12. **INSPECTION AND ACCEPTANCE:** Unless Buyer notifies HERLEY-CTI in writing within thirty (30) days from date of shipment of any products that said products are rejected, and the reason(s) why the products are being rejected, they will be deemed to have been accepted by Buyer.
13. **LIMITED PRODUCT WARRANTY:**
 - a. Seller represents and warrants for 12 (twelve) months from date of delivery, products will be free of defects in materials and workmanship subject to the provisions of this Section (hereinafter the "limited warranty").
 - b. Seller will, at Seller's option, either ship replacement products or will credit or refund the purchase price of the defective products provided (1) the defect appears within twelve (12) months from delivery; (2) Buyer notifies Seller in writing of the claimed defect within ninety (90) days after Buyer knows or should



reasonably have known of the claimed defect but in no event shall the warranty period be longer than twelve (12) months, and (3) Seller's examination of the product discloses that the claimed defect actually exists.

- c. Buyer shall follow Seller's instructions regarding return of defective product and no product will be accepted for replacement, credit or refund without the written authorization of and in accordance with Seller's reasonable instructions. Returned products shall become Seller's property. If the returned product is not defective, Buyer shall pay Seller, within thirty (30) days of Seller's invoice date, all costs of handling, inspection, repairs and transportation at Seller's then-prevailing rates. Replacement products shall be warranted as set forth above in this warranty clause.
 - d. SELLER MAKES NO WARRANTY WITH RESPECT TO PROTOTYPES. THIS LIMITED WARRANTY DOES NOT EXTEND TO ANY SYSTEM INTO WHICH A PRODUCT IS INCORPORATED. THIS LIMITED WARRANTY APPLIES ONLY TO BUYER AND MAY NOT BE ASSIGNED NOR EXTENDED BY BUYER TO ANY OF ITS CUSTOMERS OR OTHER USERS OF ANY PRODUCT. SELLER MAKES NO WARRANTIES OF ANY KIND WITH RESPECT TO: (A.) EXPERIMENTAL OR DEVELOPMENTAL PRODUCTS; (B.) PRODUCTS WHICH (I) HAVE BEEN SUBJECT TO MISUSE, NEGLIGENCE, ACCIDENT OR ABUSE; (II) HAVE BEEN REPAIRED OR ALTERED BY ANYONE OTHER THAN SELLER; (III) HAVE BEEN IMPROPERLY INSTALLED, IMPROPERLY STORED OR IMPROPERLY MAINTAINED BY ANYONE OTHER THAN SELLER; (IV) HAVE BEEN USED IN VIOLATION OF SELLER'S INSTRUCTIONS OR SELLER QUALITY OR SAFETY STANDARDS; OR (V) HAVE HAD THEIR WARNING LABELS, SERIAL NUMBERS OR MONTH AND YEAR OF MANUFACTURE OR SHIPMENT, IF ANY, REMOVED, DEFACED OR ALTERED.
 - e. EXCEPT AS STATED IN THIS SECTION, SELLER, ITS SUBSIDIARIES, AFFILIATES AND SUBCONTRACTORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE. THIS SECTION SETS FORTH BUYER'S SOLE REMEDY IN CONNECTION WITH ANY WARRANTY MATTER.
14. PATENT AND DESIGN INDEMNITY: To the extent that products delivered hereunder are manufactured in accordance with specifications, designs or other materials furnished by Buyer, Buyer agrees to defend, indemnify and hold HERLEY-CTI harmless from any and all expenses, damages, costs, or liabilities which may be incurred by HERLEY-CTI as a result of any claim of infringement, misappropriation or other violation of another party's intellectual property rights or for any claim of product liability or design defect. HERLEY-CTI agrees promptly to inform the Buyer of any claim made against HERLEY-CTI with respect to such products and HERLEY-CTI agrees to cooperate with



the Buyer in every way reasonably available to facilitate the defense against any such claim.

15. **MODIFICATIONS:** Unless otherwise provided, HERLEY-CTI reserves the right to modify product specifications of products ordered by the Buyer herein providing that the modification will not materially affect form, fit or function.
16. **SELLER PROPERTY:** HERLEY-CTI shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment, any specifications, drawings, schematics or other types of information, data, software or any other item designed or created by HERLEY-CTI in performance of Buyer's order notwithstanding the fact that Buyer may have paid non-recurring engineering charges. No right, title or license in any such item or design is hereby granted to Buyer.
17. **GOVERNING LAWS:** The courts in the jurisdiction of the State of Connecticut, USA shall have exclusive jurisdiction for any dispute arising here from. This agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, USA, excluding its conflict of laws provision and excluding the United Nations Convention on the Sale of Goods. The prevailing party in any legal proceeding shall be entitled to recover its reasonable attorneys' fees in connection therewith.
18. **LIMITATION OF LIABILITY:** SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, COST OF REPAIR, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER OR NOT BASED UPON EXPRESS WARRANTY OR IMPLIED WARRANTY (EXCEPT FOR THE OBLIGATIONS ASSUMED BY SELLER UNDER THE PRODUCT WARRANTY CLAUSES), 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 ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT, WHICH PROVES TO BE DEFECTIVE.
19. **SUPPLEMENTAL CLAUSES FOR EXPORT ORDER:**
 - License and Permit Requirements -
 - (1) HERLEY-CTI will secure all export licenses and permits required by the United States Government except in those cases where the Buyer already holds a valid export license. When HERLEY-CTI secures the license application, the Buyer will furnish reasonable cooperation in providing the required information. If such licenses and permits are not paid for the Buyer, such payments will be added to the contract price.
 - (2) Buyer will secure all licenses and permits required by the foreign government and HERLEY-CTI will furnish reasonable cooperation in acquiring such licenses and permits. The delivery schedule is contingent upon securing all necessary licenses and permits.
 - (3) Failure to obtain a required license or permit in sufficient time to permit delivery within the time set forth in the contract and without fault or negligence of the contracting parties shall necessitate an adjustment in the delivery schedule.
 - (4) The Buyer shall comply with all applicable laws, rules and regulations, including but not limited to those concerning export from the United States or reexport of any product purchased hereunder.



20. SEVERABILITY: If any provision hereof is invalid or unenforceable, all other provisions shall remain in full force and effect.
21. WAIVER: Any waiver of HERLEY-CTI is ineffective unless it is in writing. HERLEY-CTI's failure to enforce, or waiver of a breach of, any provision hereof shall not constitute a waiver of any other breach or provision.