

**TERMS AND CONDITIONS OF SALE**

**1. Acceptance and Governing Provisions.** Beneq, Inc. or an affiliate ("Seller") agrees to sell Buyer Seller's goods and services ("Goods"), but only according to these Terms and Conditions of Sale ("Terms"). The earliest of any of the following events shall be Buyer's consent to these Terms: (a) failure to object to the Terms within ten days of the date of Seller's quotation or acknowledgement; (b) receipt of the first shipment of Goods; or (c) issuance of the first payment for Goods. Seller's Order Acknowledgement, these Terms, and Seller's quotation, if any, comprise the complete and exclusive contract for the sale of the Goods (the "Contract"). If conflict arises between any terms and conditions of those documents, the foregoing shall be their order of precedence; provided that a written agreement executed between Seller and Buyer shall supersede any different or inconsistent term of the Contract. The terms provided on or with Buyer's purchase order shall not be construed as part of this Contract. Supplier expressly rejects all inconsistent or additional terms provided on or with Buyer's order(s) for Goods. Buyer understands and agrees that it is an express condition of Seller's agreement to sell Goods to Buyer that Buyer agrees to these Terms.

**2. Price and Payment.** Seller's quoted price excludes all charges and expenses connected with carriage of the Goods to Buyer and all taxes and customs duties relating to the sale of Goods, but includes packing costs. Subject to credit approval by Seller, Buyer shall pay Seller in U.S. funds within 30 days of the date of Seller's invoice. Seller may invoice Buyer upon the earlier of shipment, or notice of readiness to ship. If Seller accepts an order with multiple shipment dates, Seller will invoice Buyer as of the shipment dates of Goods. For blanket orders or custom Goods, if Buyer does not take delivery of the entire order per the agreed upon schedule, then Seller shall invoice Buyer for the remaining balance due. Seller may make, and invoice for, partial shipments. If Buyer is not located in the U.S.A., Buyer shall provide Seller with an acceptable letter of credit ("LOC") in the amount of the Purchase Price, issued or confirmed by Seller's designated major U.S. bank, with expiry date 30 days after shipment and partial drawings permissible. LOC payments shall be made upon presentation either of invoice, or bill of lading or warehouse receipt. If Buyer does not pay Seller on the agreed dates of payment, Buyer shall pay Seller 1½ % of the unpaid balance monthly. In addition to charging such interest, Seller may cancel or reschedule delivery of Goods if Buyer is in default of payments or any other material term of this Contract. Customer warrants and represents that it is purchasing the Goods and incurring the debt in the ordinary course of business and financial affairs.

**3. Acceptance of Goods.** No acceptance conditions apply to Buyer's purchase of Goods or Services. Any defects in material or workmanship, or mis-shipment, shall be provided for under the warranty in Paragraph 6.

**4. Title and Risk of Loss.** Delivery shall be EXW Seller's plant, (ex works Incoterms 2010). Loss, damage, or destruction of Goods that occurs while the risk of such loss or damage is Buyer's does not relieve Buyer of its obligation to pay Seller for the Goods.

**5. Delivery.** Seller will substantially meet quoted delivery dates, which are estimated based on conditions known at the time of quotation. Any ship date confirmed in or subsequent to Seller's Order Acknowledgement will not be changed by Buyer within "x" number of days of such ship date, where "x" equals the longer of (a) the number of days' lead time for the Goods as determined by Seller, or (b) 90 days. Seller shall not be liable for any delay in delivery. If Seller experiences supply and material shortages or other manufacturing delays, Seller may ship partial shipments of Buyer's orders and invoice Buyer for those partial shipments. Buyer may cancel, without each party incurring liability to the other, an order that remains undelivered 60 days after its delivery date (proposed by Buyer and accepted by Seller).

**6. Limited Warranty.** Seller warrants that the Goods will conform to published specifications and be free from defects in material for twelve (12) months from delivery. To the extent that Goods incorporate third-party-owned software, Seller shall pass on Seller's licensor's warranty to Buyer subject to the terms and conditions of Seller's license. Warranty repairs shall be warranted for the remainder of the original warranty period. Buyer shall report defect claims in writing to Seller immediately upon discovery, and in any event, within the warranty period. Buyer must return Goods to Seller within 30 days of Seller's receipt of a warranty claim notice and only after receiving Seller's Return Goods Authorization. Seller shall, at its sole option, repair or replace the Goods. If Goods were repaired, altered or modified by persons other than Seller, this warranty is void. Conditions resulting from normal wear and tear and Buyer's failure to properly store, install, operate, handle or maintain the Goods are not within this warranty. Repair or replacement of Goods is Seller's sole obligation and Buyer's exclusive remedy for all claims of defects. If that remedy is adjudicated insufficient, Seller shall refund Buyer's paid price for the Goods and have no other liability to Buyer. All warranty repairs must be performed at Seller's authorized service center using parts approved by Seller. Buyer shall pay costs of sending Goods to Seller on a warranty claim and Seller shall pay costs of returning Goods to Buyer. The turnaround time on repairs will usually be 30 working days or less. Seller accepts no added liability for additional days for repair or replacement. If Seller offers technical support relating to the Goods, such support shall neither modify the warranty nor create an obligation of Seller. Buyer is not relying on Seller's skill or judgment to select Goods for Buyer's purposes. Seller's software, if included with Goods, is sold as is, and this warranty is inapplicable to such software. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

**7. Confidentiality and Intellectual Property.** All intellectual property, including but not limited to, technical and commercial information, data, schematics, designs, production techniques, and ideas (IP) Seller has supplied or shall supply Buyer, excluding public domain information or information that Buyer lawfully possessed in tangible form before receiving such information from Seller, is proprietary to Seller and disclosed to Buyer in confidence only to assist Buyer to evaluate and use the Goods. Buyer shall not disclose or make such IP available to any other person, or use such IP except for such limited purpose. Any sketches, models or samples submitted by Seller shall remain Seller's property. Sale of Goods to Buyer does not convey a license, implied or otherwise, under any patent, copyright, trademark or trade secret in which Seller has an interest, nor does it convey rights to any descriptive data, including but not limited to, Seller's drawings, schematics, software, secrets, processes, or tooling.

**8. Experimental Products.** If Seller delivers "prototype," "sample," "for engineering approval," or other similarly designated goods ("Experimental Goods"), it is an express condition that the Experimental Goods are without warranty of any kind, express or implied, including but not limited to the warranty in paragraph 6. Experimental Goods and related documentation are exclusively Seller's IP and shall remain confidential. Seller's delivery of Experimental Goods to Buyer neither creates nor transfers any license, implied or express, of Seller's IP. Buyer will disclose Experimental Goods only to such of Buyer's employees who need such disclosure to carry out testing and evaluation to which Seller has agreed and to no consultants without Seller's prior written approval. Buyer will provide Seller with all reports and results from Buyer's testing and evaluation of Experimental Goods. SELLER DISCLAIMS WARRANTY OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY, TITLE AND NON-INFRINGEMENT.

**9. Patent Indemnity.** Seller agrees at its expense to defend any suit alleging direct infringement instituted against Buyer (but not subsidiaries or customers of Buyer) and indemnify Buyer against any award of damages and costs for direct infringement made against Buyer by a court of last resort to the extent that the damages award is based on a final determination that the Goods as and when furnished by Seller to Buyer directly infringed any U.S. patent, trademark or copyright. The indemnity obligations in this section do not apply to Goods made or modified to Buyer's specifications, and are expressly conditioned upon: (a) Buyer providing Seller with written notice promptly, and in any event no later than ten days' from Buyer's receipt of notice, of such claim; (b) Seller having the option of controlling the defense against such claims and the negotiation for their settlement; (c) Buyer cooperating with Seller in the defense and negotiations relating to the claims; and, (d) if Seller determines that the Goods are or are

likely to be the subject of direct infringement claims, Buyer permitting Seller to obtain the right for Buyer to keep using the Goods, or obtain substitute goods, or modify the Goods to be non-infringing, or refund the price. The indemnity obligations stated in this section shall not apply if the infringement claims are the result of: (a) Buyer or Buyer's customer altering the Goods; (b) use of the Goods in a manner neither intended nor contemplated at the time of the sale; or, (c) Buyer's failure to use a modified or substitute good provided by Seller pursuant to this section. This indemnity is in lieu of all warranties, express or implied, with regard to any claim of infringement. ANY WARRANTY AGAINST INFRINGEMENT THAT MAY BE PROVIDED UNDER THE UNIFORM COMMERCIAL CODE AND/OR ANY OTHER COMPARABLE LAW IS EXPRESSLY DISCLAIMED. If the Goods are manufactured according to Buyer's specifications, Buyer shall indemnify Seller and hold Seller harmless from any claims or liability for patent or trademark infringement on account of the sale of Goods. Seller shall fully cooperate with Buyer in the defense against such claims and the negotiation for their settlement.

**10. Limitation of Liability.** SELLER SHALL IN NO EVENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THE CONTRACT, OR ANY DEFECT IN OR FAILURE OF THE GOODS, INCLUDING BUT NOT LIMITED TO, CLAIMS BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, ENVIRONMENTAL DAMAGE, INCREASED EXPENSES OF OPERATION, COST OF REPLACEMENT GOODS, OR CLAIMS OF BUYER OR BUYER'S CUSTOMERS, WHETHER OR NOT BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. EXCEPT WITH RESPECT TO THE INDEMNITY OBLIGATIONS UNDERTAKEN IN THE PREVIOUS PARAGRAPH, SELLER'S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL NOT EXCEED THE PRICE PAID FOR THE GOODS UPON WHICH SUCH LIABILITY IS BASED AND ALL SUCH LIABILITY SHALL TERMINATE NO LATER THAN ONE YEAR FROM THE DATE OF DELIVERY OF THE GOODS.

**11. Medical and Aeronautic Applications.** Buyer will at its own expense obtain and maintain all approvals and permits required by U.S. Government laws and regulations for medical or aviation devices or components that use the Goods. Buyer warrants that all Goods will, upon resale or distribution, not be adulterated or misbranded, and will be lawfully introduced into interstate commerce, without violation of any laws applicable to manufacture, processing and distribution of Goods. While Seller does claim expertise in displays for medical devices, Seller is not an expert in either medical or aviation devices or components. Buyer does not rely on Seller's advice in selecting products for Buyer's intended uses. In the event that any third party brings a tort action against Seller due to injury arising from use of Buyer's product(s) with the Goods, Buyer shall hold harmless, defend, and indemnify Seller for all costs and damages arising from and relating to such claims unless Seller's negligence was the sole cause of the injury. The costs of Seller obtaining its own defense counsel shall be included in Seller's costs recoverable from Buyer.

**12. Applicable Law.** The Contract shall be governed by the law of the State of Georgia, exclusive of its conflicts of law principles. Any disputes arising out of this Contract that cannot be informally resolved shall be adjudicated exclusively in any court of competent jurisdiction. This Contract is expressly conditioned on the exclusion of the application of the United Nations Convention on the International Sale of Goods.

**13. Termination.** Except as expressly provided in Paragraph 5, Buyer may cancel its order, reduce quantities, revise specifications or extend scheduled delivery only upon terms accepted in writing signed by Seller. Buyer either shall compensate Seller for damages resulting from cancellation, including but not limited to, out-of-pocket costs, lost profit, and allocable overhead, or pay a restocking and cancellation fee of 25% of the purchase price, whichever is greater. Seller may, at its option and without either incurring liability to Buyer or prejudicing Seller's rights to other available remedies, either cancel or reschedule Buyer's order if Buyer either is in default of payment obligations to Seller under this or any other agreement, or becomes insolvent, is the subject of bankruptcy proceedings, or ceases to do business. Buyer's obligations under Paragraphs 2, 7, 9, 11, 18 and 22 shall survive termination of this Contract.

**14. Government Contracts.** Unless otherwise agreed to in writing between Seller and Buyer, no term or condition required in any U.S. Government contract or related subcontract shall be part of this Contract or binding upon Seller and Seller rejects any government provisions included in or referred to by Buyer's request for quotation, purchase order, or any other document.

**15. Export Laws.** The Goods are subject to U.S. Government export laws and regulations. Buyer shall not export, re-export, or transfer (directly or indirectly) the Goods or technical data received from Seller without strictly complying with all such laws and regulations, including obtaining all required licenses, authorizations, certifications, and approvals. Seller will cooperate with Buyer to obtain any export licenses Buyer seeks, but obtaining such licensing shall be the exclusive responsibility of Buyer and a condition of sale.

**16. Changes.** Seller may make process and design changes in Goods that do not adversely affect form, fit, and function without notice to and approval from Buyer. Seller also may furnish suitable substitutes for materials unobtainable or economically or otherwise impractical or otherwise in shortened supply. Buyer may not change any terms of the Contract, including but not limited to, delivery terms, without advance written approval signed by Seller.

**17. Tools.** Any dies, jigs, or tools made or purchased by Seller remain Seller's property, irrespective of whether or not Seller assessed charges to Buyer. Tool charges entitle Buyer to have tools used on Buyer's Goods but not to title or possession of the tools.

**18. Software License.** If Seller provides software with the Goods, that software is proprietary to Seller or Seller's suppliers. Seller grants Buyer a nonexclusive, perpetual license to use the software only on and in conjunction with the Goods. Buyer agrees that title remains with Seller (and its suppliers) and Buyer shall not disassemble, decode, translate, copy or modify the software except for archival or back-up purposes as necessary for use on and with the Goods. Buyer will maintain all proprietary marks on software provided by Seller. Buyer may transfer this license if transferring the Goods also and if the transferee agrees to comply with the restrictions of this license. Upon such transfer, Buyer's license terminates and Buyer shall destroy all copies of the software and related documentation in Buyer's possession.

**19. Waiver.** Failure by a party to insist on performance of any provision shall not be a waiver of the rights or remedies available in the event of a subsequent default by the other party.

**20. Assignment.** Seller may assign its rights or delegate its duties under this Contract without the prior written consent of Buyer.

**21. Force Majeure.** Seller shall not be liable in any manner for failure to perform caused by war, riot, fire, flood, volcano, earthquake, or any act of God or failure by any third-party hardware, software, wiring, electrical system or utilities, acts of the Buyer or its customer, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of Seller.

**22. Trademarks.** Buyer agrees that it will not use any of Seller's names or trademarks without Seller's prior written permission.

**23. Limitation on Time.** All claims of action by Buyer against Seller shall be filed against Seller within one year from the date of the event(s) that gave rise to the claim(s) or be discharged and barred forever.

**24. Severability.** If any provision of this Contract or part thereof is rendered void, illegal, or unenforceable in any respect under any law the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**25. Final Agreement.** This Contract supersedes all prior representations, warranties, demonstrations, discussions, advertisements, understandings, writings, and agreements between the parties, including without limitation, requests for quotations, printed purchase order terms and conditions and releases, with respect to the Goods and Services.