

Vortran Laser Technology, Inc. General Terms and Conditions of Sale

PLEASE READ THIS DOCUMENT CAREFULLY. THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AND SOLE BASIS UPON WHICH VORTRAN LASER TECHNOLOGY, INC. ("VLT") AGREES TO SELL THE PRODUCTS ("Products") IDENTIFIED ON THE ACCOMPANYING SALES ORDER CONFIRMATION or QUOTATION ("*Confirmation*") AND SHALL BECOME THE COMPLETE AND EXCLUSIVE AGREEMENT (the "*Agreement*") BETWEEN VLT AND THE PARTY NAMED ON THE ACCOMPANYING CONFIRMATION ("*Buyer*"). ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER VIA ACKNOWLEDGEMENT HEREOF OR VIA PURCHASE ORDER OR VIA ANY SIMILAR DOCUMENT WILL NOT BE APPLICABLE UNLESS SPECIFICALLY ACCEPTED IN WRITING BY VLT. BUYER: IF YOU DO NOT AGREE TO THESE TERMS YOU MUST RETURN THE PRODUCTS WITHIN 5 BUSINESS DAYS OF RECEIPT. OTHERWISE, YOUR RETENTION OF THE PRODUCT WILL BE DEEMED YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. **TERMS AND CONDITIONS**

The terms and conditions govern the sale of all products and services ("Products") by Vortran Laser Technology, Inc. and its divisions and subsidiaries ("VLT") and apply notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication ("Purchase Order") from Buyer. These terms and conditions may only be waived or modified in a written agreement signed by an authorized representative of VLT. Neither Buyer's acknowledgment of a purchase order nor Buyer's failure to object to conflicting, contrary or additional terms and conditions in a purchase order shall be deemed an acceptance of such terms and conditions or a waiver of the provisions hereof.

2. **QUOTATION**

Only written quotations shall be binding upon VLT and all quotations are subject to the terms and conditions stated herein except as specifically modified by any additional terms and conditions stated in the quotation. Notwithstanding any terms and conditions on Buyer's order, acceptance by VLT of any order is expressly made conditional on Buyer's agreement to these terms and conditions unless any additional or different terms or conditions shall be explicitly agreed to in writing by an authorized officer of VLT at its principal office in Sacramento, California prior to acceptance of the order. Failure of VLT to object to provisions contained in any order or other communication from Buyer shall not be construed as a waiver of these terms and conditions nor an acceptance of any such provision. In the event of conflict between the terms and conditions stated herein and those stated in Buyer's order or any documents incorporated by reference in Buyer's order, the terms and conditions stated herein shall govern. The quotation is firm for thirty (30) days from the date of issue unless withdrawn by VLT before receipt of written acceptance.

3. **ORDER**

Buyer issuing a Purchase Order shall initiate orders or otherwise placing an order by electronic means acceptable to VLT. Orders shall identify the Products, unit quantities, part numbers, descriptions applicable prices and requested delivery dates. All orders are subject to acceptance by VLT. No orders for standard Products ("Standard Products") may be cancelled or rescheduled without Buyer's consent, which consent may be given by VLT in its sole discretion. VLT reserves the right to allocate sales of Products among its customers in its sole discretion. Notwithstanding any provision of these terms and conditions to the contrary, orders for special, custom, value-added and other non-standard Products, including Products to be assembled in kit form, Products of manufacturers which do not appear on Buyer's line card, work-in-process and Products otherwise identified by VLT as "NCNR" OR "Non-Cancelable and Non-Returnable" ("Non-Standard Products") shall be non-cancelable and non-returnable.

4. **PRICES**

Prices shall be as specified by VLT and shall be applicable for the period specified in Buyer's quote. If no period is specified, prices shall be applicable for thirty (30) days. Notwithstanding the foregoing, prices shall be subject to increase in the event of an increase in VLT's costs or other circumstances beyond VLT's reasonable control. Prices are exclusive of taxes, impositions and other charges, including, sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If VLT shall be liable for or shall pay any of the foregoing, same shall be paid by Buyer to VLT in addition to the price of the Products.

5. **TERMS OF PAYMENT**

Payment shall be net thirty (30) days from date of invoice upon approval of Buyer's credit by VLT or as otherwise specified by VLT. Buyer agrees to pay the entire net amount of each invoice from VLT pursuant to the terms of each such invoice without offset or deduction. Orders are subject to credit approval by VLT, which may in its sole discretion at any time change the terms of Buyer's credit, require payment in cash, bank wire transfer or by official bank check and/or require payment of any or all amounts due or to become due for Buyer's order before shipment of any or all of the Products. If VLT believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, VLT may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all Non-Standard Products ordered by Buyer. Buyer agrees to submit such financial information from time to time as may be reasonably requested by VLT for the establishment and/or continuation of credit terms. Checks are accepted subject to collection and shall be deemed the date of payment. Any check received from Buyer may be applied by VLT against any obligation owing from Buyer to VLT, regardless of any statement appearing on or referring to such check, without discharging Buyer's liability for any additional amounts owing from Buyer to VLT, and the acceptance by VLT of such check shall not constitute a waiver of Buyer's right to pursue the collection of any remaining balance. Buyer shall pay interest on any invoice not paid when due from the due date to the date of payment at rate of one and one-half (1 ½%) percent per month or such lower rate as may be the maximum allowable by law. If Buyer fails to make payment when due, VLT may pursue any legal or equitable remedies, in which event VLT shall be entitled to reimbursement for costs of collection and reasonable attorney's fees.

6. **DELIVERY AND TITLE**

All shipment by VLT are Ex Works point of origin and all transportation charges shall be paid by Buyer in addition to the price of the Products. Subject to Buyer's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. VLT shall make selection of the carrier and delivery route unless specified by Buyer. VLT shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery dates. Buyer acknowledges that delivery dates provided by VLT are estimates only and that VLT is not liable for failure to deliver on such dates. VLT reserves the right to make deliveries in installments. Delivery of a quantity, which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

7. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS

Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by VLT within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products shall be accepted by VLT without a Return Material Authorization ("RMA") Number, which may be issued by VLT in its sole discretion. Returned Products must be in original manufacturer's shipping carton complete with all packing materials. All Products for return shall be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to Buyer, freight collect.

8. FORCE MAJEURE

VLT shall not be liable for failure to fulfill its obligations herein or for delays in delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, natural disasters, acts or omissions of other parties, acts or omission of civil or military authority, Government priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism, delays in transportation or inability to obtain labor or materials through its regular sources. Buyer's time for performance of any such obligation shall be extended for the time period of such delay or VLT may, at its option, cancel any order or remaining part thereof without liability by giving notice of such cancellation to Buyer.

9. STANDARD LIMITED WARRANTY

Except as hereinafter expressly limited, or otherwise on the sales order acknowledgment or VLT product literature, VLT unconditionally warrants that its Standard Products, when operated at or below rated optical power and within specified physical and electrical limits shall be free from defects in materials and workmanship for a period of one year from the date of shipment from VLT. Products are not designed or intended for use in (i) the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; or (iii) operating life-support or life-critical medical equipment, and without limiting any other disclaimers herein, VLT disclaims any express or implied warranty of fitness for such uses. Liability under this warranty is limited, at VLT's option, to replacing, repairing or giving credit for the purchase price of any equipment returned and shipped prepaid to Vortran Laser Technology, Inc. at its plant in Sacramento, California, within the warranty period, provided prior authorization for such return has been given by an authorized representative of VLT and Buyer has obtained a Returned Material Authorization ("RMA") number from VLT. Equipment or components repaired or replaced under this warranty are subsequently warranted only for the remaining, unexpired portion of the warranty period applicable to the original equipment or component at the time of issuance of the RMA number. If VLT elects to repair or replace the equipment, VLT shall have a reasonable time to repair or replace such equipment. This warranty shall not apply to any instrument or component not manufactured by VLT. When Products manufactured by others are included in VLT equipment the original manufacturer's warranty, if any, is extended to VLT customers. This warranty shall not apply to equipment or components, which inspection by VLT shall disclose to have become defective or unworkable due to accident, neglect, abuse, mishandling, misuse, accidental alteration, negligence, improper installation, improper adjustment, improper repair or testing, operation outside of VLT environmental specifications or other causes beyond VLT control. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to VLT under this contract or otherwise all warranties and remedies granted under this Section and all warranties and obligations of VLT to service, repair, replace, correct or otherwise remedy defects, errors or failures under any other contract between Buyer and VLT may, at VLT option, be terminated. VLT SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION LOSS OF PROFITS. VLT MAKES NO WARRANTIES, WHETHER WRITTEN OR ORAL, REGARDING EQUIPMENT MANUFACTURED BY IT (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE), EITHER EXPRESS OR IMPLIED, EXCEPT AS PROVIDED HEREUNDER. THE FOREGOING SHALL CONSTITUTE THE EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY VLT OF ITS WARRANTIES HEREUNDER WHETHER IN CONTRACT OR IN TORT. THIS WARRANTY IS THE ONLY WARRANTY MADE BY VLT AND CAN ONLY BE AMENDED BY A WRITTEN INSTRUMENT SIGNED BY AN OFFICER OF VLT.

10. LIMITATION OF LIABILITY.

IN NO EVENT ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER ANY LIMITED REMEDY PROVIDED HEREUNDER SHOULD FAIL OF ITS ESSENTIAL PURPOSE, SHALL VLT, ITS AFFILIATES OR ITS SUPPLIERS BE LIABLE FOR:

- (a) LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS OR LOST DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF VLT OR ITS AFFILIATE OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE;
- (b) FOR THE COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY THE BUYER; OR FOR
- (c) ANY AMOUNT OF DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE REFUND OF THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT(S) GIVING RISE TO THE EVENT IN QUESTION.

BUYER: BY ENTERING INTO THIS AGREEMENT YOU AGREE THAT THE PROVISIONS OF THIS SECTION ARE A MATERIAL BASIS FOR VLT'S ENTRY INTO THIS AGREEMENT, AND THAT ANY LIMITED REMEDY WILL APPLY AND BE YOUR EXCLUSIVE REMEDY REGARDLESS OF WHETHER IT FAILS OF ITS ESSENTIAL PURPOSE.

11. THIRD PARTY CLAIMS

NO THIRD PARTY CLAIMS. EXCEPT AS EXPRESSLY PROVIDED IN THE SECTION RELATED TO INTELLECTUAL PROPERTY CLAIMS, AND EXCEPT FOR CLAIMS UNDER THE STANDARD LIMITED WARRANTY BY END-USERS RELATING TO PRODUCTS SUCH END USERS HAVE PURCHASED FROM A CUSTOMER WHO IS AN AUTHORIZED DISTRIBUTOR, OEM OR RESELLER, NEITHER VLT NOR ITS SUPPLIERS OR AFFILIATES SHALL HAVE ANY LIABILITY TO ANY PERSON FOR ANY THIRD PARTY'S CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT.

12. BANKRUPTCY; INSOLVENCY

If Buyer shall become bankrupt or insolvent or compounds with his creditors or commences to be wound up or suffers a receiver to be appointed, VLT shall be at liberty by notice in writing to cancel this Agreement with respect to any undelivered Products and declare all sums owed by Buyer immediately due and payable without judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to VLT.

13. INTELLECTUAL PROPERTY

VLT makes no representations or warranties that any of its Products or any parts or portions thereof (including any Standard Products or Non-Standard Products), or their use or sale, do not infringe or violate any copyrights, patents, trademarks or trade names, intellectual property rights, trade secrets, or other rights of third parties. VLT does warrant that its Products do not presently infringe any U.S. patent issued by the United States Patent Office as set forth in this Section 13 as follows.

For the purposes of this Agreement, "Designs and Materials" shall mean all designs, discoveries, inventions, products, computer programs, procedures, tooling, specifications, improvements, developments, business plans, drawings, notes, documents, information and materials made, conceived or developed by VLT alone or with others. VLT maintains that any and all Designs and Materials, copyrights, patent rights, trade marks, trade secrets, and other intellectual property or other rights developed, discovered, or obtained, in whole or in part, in connection with, or which otherwise refer or relate to, any of its Products (including Standard Products and Non-Standard Products), subsystems or information, sold or furnished to the Buyer, remains solely the property of VLT unless any such right is specifically designated in a writing signed by a duly authorized representative of VLT that it shall be released to the Buyer. VLT will have the sole right to determine the treatment of any Designs and Materials, copyrights, patent rights, trade marks, trade secrets, and other intellectual property or other rights, including the right to keep them as trade secrets, to file and execute patent applications on them, to use and disclose them without prior patent application, to file registrations for copyright or trademark on them in its own name, or to follow any other procedure that VLT deems appropriate. Buyer agrees that VLT has the right to defend, or at its option to settle and VLT agrees, at its own expense, to defend or at its option to settle, any claim, suit or proceeding brought against Buyer insofar as the same is based on any claim that the Product (except for equipment basically of Buyer's specifications) shall in design or construction directly infringe any United States patent. VLT agrees to pay, subject to the limitations hereinafter set forth, any final judgment entered against Buyer on such claim in any such suit or proceeding defended by VLT. Buyer agrees that VLT at its sole option shall be relieved of the foregoing obligations unless Buyer notifies VLT promptly in writing within 14 days of Buyer's notice of any such claim, suit, or proceeding, and gives VLT proper and full information and assistance to settle and/or to defend any such claim, suit or proceeding. If the Product, or any part thereof, furnished by VLT to Buyer becomes, or in the opinion of VLT may become, the subject of any claim suit or proceeding for infringement of any United States patent, or in the event of an adjudication that the Product or part infringes any United States patent or if the use or sale of such Products or part is enjoined, VLT may, at its option and its expense: (a) procure for Buyer the right under such patent to use such Products or part, or (b) replace such Products or part with other suitable products or parts, or (c) suitably modify such Products or part, or (d) if the use of such Products or part shall be prevented by permanent injunction, accept the return of such Products or part and refund the purchase price paid therefore by Buyer, less a reasonable sum for use and damage, such sum to be determined by VLT shall have no liability for any infringement arising from (i) the combination of such Products or part with any other product or part not furnished by VLT to Buyer, or (ii) the modification of such Products or part unless such modification was made by VLT, or (iii) the furnishing to Buyer of any information, data, service or application assistance, maintenance or operational handbooks supplied with the equipment or parts. VLT shall not be liable for any costs or expenses incurred without VLT written authorization. THE FOREGOING STATES THE ENTIRE WARRANTY BY VORTRAN LASER TECHNOLOGY, INC. AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY SUCH PRODUCT OR PART.

14. PROPRIETARY INFORMATION

Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of such information during or after the term of their employment by or services for Buyer. Buyer shall not use Proprietary information except as expressly permitted hereunder, shall not disclose Proprietary Information of VLT to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by VLT.

"Proprietary Information" means: 1) any information which is maintained in secrecy or confidence by VLT including without limitation information about the design, composition, manufacture and function of VLT Products, and which is disclosed by VLT to the Buyer; and 2) anything tangible from which such information may be obtained. This Section shall not apply to information, which Buyer demonstrates was in Buyer's possession prior to receipt from VLT or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.

15. TERMINATION

Buyer may cancel orders accepted by VLT only with written consent of VLT (which VLT may withhold for any reason) and upon payment of reasonable cancellation charges. VLT shall have the right to cancel any order placed, or to delay, the shipment thereof for failure of Buyer to meet promptly payments due VLT or any other reasonable requirements established by VLT, or for any acts or omissions of Buyer that delay VLT performance. In the event of bankruptcy or insolvency of Buyer, or, in the event any proceeding is brought by or against Buyer, voluntarily or involuntarily, under any provision of the Bankruptcy Act or any insolvency law, VLT shall be entitled to cancel any order then outstanding, at any time during the period allowed for filing claims against the estate, and shall receive reimbursement for its reasonable and proper cancellation charges.

16. NON-WAIVER OF DEFAULT: REMEDIES

In the event of any default by Buyer under this or any other contract between VLT and Buyer, VLT may decline to make further shipments. If VLT elects to continue to make shipments VLT action shall not constitute a waiver of any default by Buyer or in any way affect VLT legal remedies for any such default. All VLT rights and remedies, whether evidenced hereby any other contract or document, shall be cumulative and nonexclusive and may be exercised singly or concurrently.

17. EXPORT

(a) By submitting an order for VLT equipment which is accepted by VLT, Buyer agrees that, regardless of any disclosure made by Buyer to VLT of an ultimate destination of VLT equipment, Buyer will not export, directly or indirectly, any VLT equipment, or any system incorporating said equipment, without first obtaining a license from the United States Department of Commerce or any other agency or department of the United States government, as required.

(b) Buyer agrees to abide by all relevant regulations dealing with export trade from the United States. Without limiting the generality of the foregoing, Buyer acknowledges that VLT is or may become subject to the Export Control Regulations, Foreign Assets Control Regulations, and Transaction Control Regulations of the United States, with all of which regulations Buyer acknowledges it is familiar, and Buyer agrees that it will not directly or indirectly do any act or thing which would constitute a violation of any such regulations.

18. BUYER INDEMNIFICATION

Except as expressly provided in these terms and conditions, Buyer shall indemnify VLT against, and hold VLT harmless from, any and all damage, loss, liability and third party claims (including without limitation reasonable attorney's fees) arising out of or relating to Buyer's possession, use or resale of the Product, provided that such loss, liability or third party claim was not caused solely by the fault of VLT.

19. ASSIGNMENT

This contract shall be binding upon and inure to the parties and the successors and assigns of the entire business and good will of wither VLT or Buyer, or of that part of the business of either used in the performance of this contract, but shall not be otherwise assignable.

20. COMPLETE AGREEMENT; MODIFICATIONS

This contract constitutes the entire agreement between the parties relating to the sale of the equipment described on the face of the Order Acknowledgment and no addition to or modification of any provision upon the face of the contract shall be binding upon VLT unless made in writing and signed by a duly authorized representative of VLT located in Sacramento, California.

21. NOTICES

All notices given under the contract shall be in writing, mailed by first class mail, or first class air mail as the case may be, certified or registered or by fax or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect a) when mailed or b) when received if delivered by hand.

22. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of California, USA, excluding that body of law known as Conflicts of Law. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded. The parties irrevocably consent to the exclusive personal jurisdiction of and venue in the state and federal courts in Sacramento County, California, USA, over any dispute arising out of or relating to these terms and conditions, this Agreement or any Product. Reasonable attorney's fees and costs shall be awarded to the prevailing party in the event of litigation arising out of or related to this Agreement.