



DIMATION'S TERMS AND CONDITIONS OF SALE


PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY

1. GENERAL / OFFER

This quotation ("Quotation") is a formal written offer from Dimation ("Dimation", "Seller", "we", "us", "our") to sell you the Buyer ("Buyer", "Customer", "you", "your") the products ("Products", "Goods") and/or to furnish you the services ("Services"), whether performed by Dimation or a subcontractor, described on the face of this document at the price ("Price") and in the quantities ("Quantity") noted thereon. The following terms and conditions of sale ("Terms and Conditions" or "these Terms and Conditions") shall govern all sales of Goods and performance of Services to you by Dimation. These Terms and Conditions shall apply to all communications related to this transaction from either Party, including, without limitation, Buyer's purchase orders (collectively "Order"), Dimation's Quotation or other offer (collectively "Offer") and Dimation's order acknowledgement, confirmation or acceptance of your Order (collectively "Order Acknowledgement", "Confirmation"). Any additional or supplemental terms, conditions and specific details ("Additional Terms and Conditions") presented in or accompanying Dimation's Offer or Order Acknowledgement including, but not limited to, written information on the face hereof, attachments, exhibits, supplements, appendices, specifications ("Specifications", exemplified by, without limitation, J-STD-001 and or IPC-A-610, ANSI/ESD s20.20.-2007 100 Volt HBM), addenda, drawings, notes, instructions, statement of work, schedule, invoices, and change authorization), shall be deemed to be placed under and incorporated within these Terms and Conditions. Whenever the provisions in the Additional Terms and Conditions conflict with the provisions in the Terms and Conditions, the written provisions of the Additional Terms and Conditions shall control. If there is a prior sales/purchase contract agreement signed by both Parties in effect between you and Dimation pertaining to the subject matter hereof, the terms and conditions of that contract agreement shall apply to your Order, and the following Terms and Conditions do not apply. The Quotation is valid for thirty (30) calendar days from the date of Quotation and is subject to withdrawal and change without notice before acceptance by Buyer. Any typographical, clerical or other error or omission in any Quotation, Offer, price list, technical data, Order Acknowledgement, or other document or information issued by Dimation shall be subject to correction without any liability to Dimation.

2. ACCEPTANCE OF OFFER/ CONTRACT FORMATION

YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND SHALL BE DEEMED TO HAVE ACCEPTED THEM (AND ACCEPTED DIMATION'S OFFER) if you place an Order with Dimation through the issuance of a written purchase order or other communication responsive to the Offer specifying the Products, quantities and requested delivery dates, or if you accept all or any part of the Products or Services quoted or if you expressly or impliedly allow Dimation to begin performance of the quoted Services or if you make a payment for all or any part of the Products or Services ordered. Orders are not binding on Dimation and no agreement will result unless Dimation accepts the Order(s) by issuing a written Order Acknowledgement or Confirmation. Buyer's Order responsive to Dimation's Offer, Dimation's Confirmation of Buyer's Order and these Terms and Conditions (whether delivered in connection with Dimation's Quotation, Order Acknowledgement, invoice or otherwise), shall constitute the entire contract agreement ("Contract") between Dimation and Buyer (collectively "the Parties") pertaining to the subject matter hereof which Contract shall supersede all prior or contemporaneous oral or written negotiations, agreements, understanding or representations with respect thereto. Usage of the trade, custom, practice or course of dealing shall not operate to supplement or explain any term used in this contract agreement. Except to the extent the Parties shall have otherwise agreed to in writing, all terms that vary from, differ from or conflict with these Terms and Conditions wherever contained or otherwise presented by Buyer prior to, contemporaneous with, or subsequent to this Quotation and/or Order Acknowledgement are hereby expressly objected to and rejected and shall not be applicable to the Order notwithstanding any act or omission by Dimation such as, for purposes of exemplification but not by way of limitation, filling an order received from Buyer, confirming the quantity, price, and delivery terms stated on Buyer's Purchase Order, and failing to seasonably object to the aforementioned conflicting, inconsistent or additional terms and conditions contained in any Order (oral or written). Dimation shall have the right to reject a Purchase Order that that not comply with, or modifies,

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the express requirements of this Agreement or is for delivery of Products, such as, by way of example and not by way of limitation, Custom Products and Private Labeled Products defined in Section 19, or for the performance of Services not contemplated by the forecast described in the subsection titled "PRODUCTS" below.

2A PRODUCTS:

The terms and conditions in this Section sub-labeled "Products" shall apply when Buyer agrees to order from Supplier for delivery during each Contract Year during the term of this Agreement, a minimum number of Products, per Contract Year, as specified on a Schedule that shall be separately negotiated between the Parties prior to or concurrently with this Agreement. Contract Year shall mean twelve (12)-month period commencing with the date, Products are first available for a shipment to Buyer.

2A.01 a) Forecasting: Buyer agrees to order from Dimation for delivery during each Contract Year during the term of this Agreement, the minimum number of Products, per Contract Year, as is specified in the Schedule referenced in the previous paragraph attached hereto and incorporated herein (the "Minimum Purchase Commitment"). The failure to meet the Minimum Purchase Commitment shall not constitute an Event of Default as defined in Section 18. Upon the execution of this Agreement, Buyer shall provide an initial thirty (30) day firm Order ("First Order") and a three (3) month flexible forecast ("Forecast"). Each Order shall provide a description of the Product by Product Code or other mutually agreed upon between the Parties.

2A.01b) On the first business day of each calendar month after the First Order and Forecast, the first month of the Forecast will become part of the Order and a new firm Order issued, Buyer will add another month to the Forecast so that a rolling three (3) month Forecast and a rolling thirty (30) day Order is always maintained.


2A.02 Initial Approval - As of the date of Buyer's first Order under this Agreement, Buyer has tested samples of the Products which have been provided by Supplier for sampling by Buyer, and Buyer has approved such Products.

2A.03 Dimation shall use Buyer's Order and its materials and/or manufacturing planning systems to generate a Production Schedule ("PS") for sixty (60) day period based on which Dimation shall make preparations to manufacture Product for Buyer. Such preparations may include, but are not limited to, entering purchase commitments with vendors for components with lead times greater than sixty (60) days ("Long Lead-Time Items"), procuring and inventorying minimum buy quantities, tape and reel quantities and an estimated number of packaged units of materials and components required for the Product build. Additionally, such preparations may also include Dimation inking binding agreements for labor, equipment and administrative resources to support Buyer's Order. Dimation will review Forecast provided by Buyer and provide timely feedback on Product availability issues.

2A.04 Buyer may reschedule all or a part of a scheduled delivery per Buyer's Order a maximum of six (6) times per quarter, provided, however, the request for rescheduling a delivery is received by Dimation at least seven (7) days prior to the date for which the delivery is scheduled. Buyer may cancel a scheduled delivery but such cancellation shall be subject to Section 5, sub-sections(1), (4), (5) and (6) of this Agreement.

2A.05 Price Adjustments - Buyer acknowledges that the Prices set forth in Section 3 are based on the forecasted volumes provided by Buyer to Dimation. In the event Buyer fails to purchase Product in sufficient volumes consistent with the quoted prices and/or Buyer fails to meet the Minimum Purchase Commitment at the end of the Contract Year, Dimation reserves the right to bill-back Buyer for the difference between the prices paid and the prices associated with such lower volumes.

2A.06 Within a month of the end of the calendar year, Dimation will provide Buyer, in writing, an invoice listing the excess inventory procured in connection with Buyer's Orders and Forecasts during the previous twelve (12) months and

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Dimation's quoted cost and markup for each item in the inventory (collectively the "Total Cost"). Buyer agrees that it shall pay Dimation the Total Cost within thirty (30) days of the date of the invoice.

3. PRICES, PAYMENT TERMS

The Prices for all Products and Services shall be in U.S. Dollars and Buyer shall make payments in U.S. Dollars. Unless otherwise set forth in a writing by Dimation, the Prices offered apply only to the specific quantities, specifications, and delivery schedules set forth in the accompanying Dimation Quotation and/or Order Acknowledgement and are exclusive of all taxes and other charges referenced herein-below. Buyer shall pay all Prices, taxes and charges without deduction or offset. Prices shall remain fixed for the term of the Contract except however, Prices shall be subject to Dimation's right of correction at any time i) to account for error; ii) to compensate for fluctuations in the market prices of components, parts, and raw materials (collectively "Components") due to shortages, currency fluctuations, increases in freight, warehousing, insurance rates or other causes; iii) to compensate for any tax, excise, or levy imposed upon the sale, manufacture transportation or delivery of the Goods; iv) to reflect the additional cost of accommodating Buyer's purchase via credit card, third-party procurement services, software or e-commerce providers; or v) to compensate for escalation of costs triggered by a change in the specifications, designs, delivery schedules or quantities ordered. Prices do not include setup, tooling, or non-recurring engineering activities (collectively, "NRE Charges"). NRE charges must be authorized by Buyer prior to being incurred and shall be separately invoiced. Dimation shall submit an invoice to Buyer for each shipment of Products. Each such shipment is a separate and independent transaction and shall be invoiced separately unless otherwise specifically agreed.

Standard terms for domestic Orders shall be one hundred percent (100%) net due and payable thirty (30) days from the date of Dimation's invoice, subject to credit approval of Buyer by Dimation's Credit Department. Alternate terms that are specifically stated in writing on the face of the Quotation shall take precedence over and apply in lieu of the standard terms. Payment terms for international orders will be cash in advance by wire transfer or an irrevocable letter of credit confirmed with Dimation's bank. Dimation reserves the right, at its sole discretion and without prior notice, to limit, cancel, or modify Buyer's credit terms as to the amount or the time for which such credit is extended. On any invoice not paid by the maturity date, Dimation may, at its option, charge interest from maturity to date of payment at the maximum legally permissible rate ("Finance Charge"), not to exceed 1.5 percent per month, on any past due amount. Dimation, in its sole discretion and without notice to Buyer, may also withhold, delay or discontinue delivery of any Products of Services during any period of time in which Buyer's account is past due or exceeds its approved credit limit, or where Buyer fails to fulfill the terms of payment of any prior invoice submitted by Dimation, or if in Dimation's estimation, Buyer's financial condition has become impaired. Any such action by Dimation shall be in addition to and without prejudice to any other legal remedies that may be available to it. Dimation reserves the right to require the Buyer to make all or partial payment in advance of shipment or to employ an alternate mode of payment including, without limitation, payment by credit or debit card, letter of credit confirmed with Dimation's bank, electronic funds transfer using entities such as, by way of example only, PayPal, Automated Clearing House (ACH) credit transfer, or inter-bank wire transfer. No discount will be allowed unless specifically set forth on the face side hereof.

If Dimation employs any legal process to recover any amount due and payable from Buyer hereunder, Buyer shall pay all costs of collection and reasonable attorney's fees.

All transportation and handling charges, all taxes, duties, fees, or other charges of any nature including, but not limited to, consumption tax, import tax, sales tax, stamp tax, use tax, or value-added tax, customs fees and duties, and any and all other taxes arising out of this transaction and applicable to the Order (other than taxes based solely on Dimation's taxable income) shall be added to the invoice and paid by Buyer. If Buyer is claiming tax exemption, Buyer must furnish Dimation with a valid tax exemption certificate acceptable to the applicable taxing authority.

4. DELIVERY / ACCEPTANCE:

Unless otherwise specified on the face of the Quotation or a prior agreement as to shipping, a) Dimation will select a carrier and a delivery route. Dimation's standard method of shipment is UPS Ground Uninsured; b) all Products will be



delivered FOB (for domestic shipments) or FCA (for international shipments) ("FOB" and "FCA" as defined and governed by ICC "INCOTERMS 2010") point of origin Dimation's Burnsville facility of manufacture set forth on the face of the Quotation; and c) title to and risk of loss or damage to the Product shall end, and title shall pass to Buyer when Products are delivered to the carrier for shipment to Buyer or Buyer's agent (including, without limitation, any test house or other facility/service provider designated by Buyer). Buyer shall pay all shipment charges in addition to the purchase price, taxes and other charges specified in Section 3 of this document. Acceptance of the Product shall occur no later than fifteen (15) days after shipment and shall be based solely on whether the Product passes a mutually agreeable acceptance test procedure or an inspection designed to demonstrate compliance with the Specifications. Product cannot be rejected based on criteria or test procedures that were not mutually agreed upon before the time of Dimation's Confirmation of Buyer's Order. Product shall be deemed accepted if not rejected within this fifteen-day period, provided that such acceptance shall not relieve Dimation of its warranty obligations hereunder. Buyer shall notify Dimation in writing of any non-conforming Products or Services itemized in the shipping invoice within fifteen (15) days after delivery to Buyer. After the fifteenth (15th) day, Buyer shall be deemed to have accepted the Products or Services and may not revoke acceptance. Buyer acknowledges that any shipment and delivery dates ("Delivery Dates") for Products or completion of Services specified by Dimation are estimates based upon the prompt receipt by Dimation of all information, material or other resources required to proceed without interruption. Accordingly, Delivery Dates are non-binding on Dimation and Dimation will not be liable for any failure or delay in meeting such Delivery Dates or for any damages suffered by Buyer by reason of such failure or delay. Furthermore, Dimation will not be liable for excusable delays in delivery ("Excusable Delays") or failure to perform its obligations or any damages suffered by Buyer by reason of such Excusable Delays where such Excusable Delays are attributable to causes beyond Dimation's reasonable control, including, but not limited to, acts of God, acts or omissions of Buyer or other parties, acts or omissions of civil, military or Governmental authorities, fire, strikes, floods, severe weather conditions, riots, war, transportation delays, cyber attacks, terrorism, epidemics, labor disputes, or material shortages. Buyer agrees and understands that if any Product or other tangible deliverable to be delivered to Buyer under this contract by Dimation cannot be delivered due to any cause attributable to Buyer, Dimation may ship such Product or other tangible deliverable to a storage facility in which event title and risk of loss shall immediately pass to Buyer, delivery of the Product shall be deemed to have occurred; the contract price due Dimation upon delivery as well as all expenses and charges incurred by Dimation related to the storage shall be payable by Buyer in full upon receipt of Dimation's invoice; and upon payment of all amounts, Dimation shall make Products and such other tangible deliverables available to Buyer for delivery.

5. CANCELLATIONS/ CHANGE ORDERS:

Dimation shall be deemed to have accepted Buyer's Order and Buyer's Order shall become binding on the Parties upon Dimation's issuance of an Order Acknowledgement / Order Confirmation. Following acceptance, Dimation shall commence preparations to fulfill Buyer's Order. Such preparations may include, but are not limited to, entering purchase commitments with vendors for long lead-time items, procuring and inventorying minimum buy quantities, tape and reel quantities and an estimated number of packaged units of materials and components required for the Product build. Additionally, such preparations may also include Dimation inking binding agreements for labor, equipment and administrative resources to support Buyer's Order. In view of the foregoing, Buyer agrees to reimburse Dimation for any and all expenditures incurred in connection with preparations in support of Buyer's then-current Order at the time Buyer requests a cancellation, reschedule or change/amendment.

Without limiting the generality of the foregoing paragraph, cancellation or rescheduling of an accepted order for Products or Services or part thereof, a waiver or modification of its terms or conditions or any other change to the accepted order will not be binding on Dimation Inc. unless made in writing by Buyer and approved by a duly authorized officer of Dimation, such approval not to be unreasonably withheld. Should Buyer request and Dimation approve a change request, Dimation will advise Buyer in writing of the adjustments, if any, of the change request on the price, delivery schedule and/or quantities. Buyer agrees and understands that there is a lag time between Buyer's cancellation and the cancellation of the inventory required to support production of Buyer's Order. Dimation's approval of the change request is premised on Buyer's acceptance of the adjustments.

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In the event the parties agree upon a cancellation, Buyer will pay Dimation according to the following cancellation terms:

- 1) Customer is liable for 100% of the contract price for all finished Products already shipped, 100% of the contract price for all finished Products in Dimation's possession and 100 % of the contract price for all work-in-process Products still at Dimation as of the date of cancellation.
- 2) The actual cost plus a handling charge for all inventory in Dimation's possession as of the date of cancellation that is not returnable to the vendor for credit or usable for other customers.
- 3) The actual cost of all inventory for all inventory on order as of the date of cancellation and not cancelable including the actual cost of all Special Ordered Parts. Once such inventory is received, the Customer will be liable for the handling charge incurred by Dimation for disposition of such inventory.
- 4) 100% of any vendor cancellation charges incurred with respect to inventory accepted for cancellation or return by the vendor.
- 5) 100% of the contract price for all Services already performed, and 50% of the contract price for all Services for which Dimation has made preparations or has become committed for fulfillment of the contract prior to the date of cancellation.
- 6) 100 % of the labor, equipment and administrative expenses incurred by Dimation specifically to support Customer's purchase orders.

Dimation will use reasonable commercial efforts to return unused inventory and to cancel pending orders for such inventory, and to otherwise mitigate the amounts payable by Customer. However, Customer recognizes and agrees that Dimation's damages arising from any cancellation of any order or termination under this section will be difficult to estimate, and the parties agree that such cancellation charges are reasonable and are not a penalty.


In addition to Dimation's other rights and remedies available at law or equity, upon cancellation by Buyer hereunder, Dimation shall provide to Customer within (15) business days a detailed invoice of the cost of cancellation and the parties agree that all amounts set forth in such invoice shall become payable by Customer immediately upon receipt of such invoice.

6. TOOLING

All tooling, including without limitation, machines, jigs, fixtures, molds, dies, stencils, measuring and testing devices, templates, models, drawings, software, designs, or equipment procured, produced, or used by Dimation for the purposes of filling Buyer's Order, for which Dimation has separately charged Buyer and which has been paid for by Buyer in full ("Tooling") will remain the property of Buyer and, for a period of one year from the date of final delivery of all Products or Services contemplated hereunder, made available to Buyer for pickup from Dimation's facilities upon reasonable notice to Dimation. After the expiration of the one year period following the date of final delivery, Dimation shall deem the Tooling abandoned and may, in its sole discretion, and without notice to Buyer, dispose the Tooling in any manner it shall see fit, without liability to Buyer.

7. RETURN AUTHORIZATIONS

Buyer cannot return any Products for repairs, replacement, or credit without Dimation's prior authorization obtainable by submitting a return material authorization ("RMA") request within thirty days (30) days after the discovery of an apparent defect in the Product or ninety (90) days of delivery whichever occurs first. If approved, Dimation will issue Buyer a RMA number usually within 24 hours of Buyer's request. Buyer must return the defective Product, freight prepaid, within 30 days of receiving the RMA. The RMA number must appear on the shipping label outside of the shipping container together with all of the paperwork associated with the return. Dimation has the right to refuse a

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shipment or reject Products returned without the correct RMA number clearly marked on the outside of the shipping container. Issuance of a RMA number does not obligate Dimation to either approve a credit, or to evaluate, repair or replace the returned Product without a fee. Buyer shall be responsible for all shipping charges, freight insurance, import/export duties, and other costs associated with shipment of the Products from and to Buyer. Seller shall bear no liability whatsoever for any damages or loss during shipment to or from Buyer.

8. WARRANTY: DISCLAIMER OF WARRANTY

Dimation warrants only that the Products assembled or customized by it for Buyer hereunder shall be free from defects of materials and workmanship for a period of ninety (90) days after date of original shipment (“Warranty Period”) and that Products based on the Buyer’s own drawings or specifications shall, at the time of shipment, substantially conform to such drawings and specifications but only if and to the extent that each applicable drawing and/or specification has been previously agreed to by Dimation in writing. Where Services are performed for Buyer by Dimation hereunder, Dimation warrants only that the Services shall be performed by it in a competent, diligent manner and in accordance with any mutually agreed specifications. Dimation makes no representation or warranties concerning the Products and/or Services except such as are expressly contained in this paragraph (“Dimation Warranty” or “This Warranty”).

If, Buyer discovers defects in the materials or workmanship of the Product and notifies Dimation in writing of such defects within the Warranty Period and returns the Product to Dimation in accordance with the procedures set forth in Section 7 “RETURN AUTHORIZATIONS” of this document, Dimation, shall, at its option, a1) repair or replace the Product, or have the manufacturer repair or replace it, or b1) refund the purchase price of the Product.


THIS WARRANTY EXTENDS TO BUYER ONLY AND MAY BE INVOKED ONLY BY BUYER AND THERE SHALL BE NO THIRD PARTY BENEFICIARIES TO THE EXPRESS WARRANTIES CONTAINED HEREIN. DIMATION WILL NOT ACCEPT WARRANTY RETURNS FROM BUYER’S CUSTOMERS OR USERS OF BUYER’S PRODUCT(S).

THIS WARRANTY DOES NOT APPLY TO DEFECTS ARISING AS A RESULT OF BUYER’S DESIGN OR FORMULA.

8A. PROTOTYPES

If Buyer orders and/or Dimation delivers a Product designated as a “Prototype” or other Non-Production Product(s), or samples of Production Product(s) and Software, no guarantees, warranties or representations, either express or implied, as to fitness for a particular purpose or merchantability is made with respect to such Prototype. The Prototype is provided on an “AS IS” basis only and Buyer shall have the sole responsibility to test a Prototype prior to acceptance and/or incorporation into end-use applications or Production Product(s) based on the Prototype.

The Dimation Warranty shall not apply to a returned Product if, in Dimation’s sole estimation, the returned Product has been subjected to damage during misuse, alteration, improper installation, repair, neglect, accident, inundation, fire or other causes. The foregoing warranty shall not apply to pre-existing subsystems or subassemblies of a Product which is provided to Dimation by Buyer for additional value-added assembly or customization. The Dimation Warranty shall apply only to that portion of the Product that is of Dimation’s own design, assembly, customization or manufacture. The warranty for the pre-existing subsystems or subassemblies shall be coextensive with the warranty, if any, extended to Dimation by the supplier thereof. The Dimation warranty shall not apply to any component, material or consumables (“Third Party Manufactures”) utilized in the Product provided hereunder. All such Third Party Manufactures shall bear, and be subject to, the terms, conditions, and limitations of the manufacturer’s standard warranty (“Manufacturer Warranty”), which warranty is expressly in lieu of any other warranty, express or implied, of or by Dimation. Copies of the Manufacturers’ Warranties are available by contacting Dimation.

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DIMATION DOES NOT WARRANT THAT PRODUCT(S) (INCLUDING SOFTWARE) AND/OR SERVICES ARE FREE OF INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES. IN NO EVENT SHALL DIMATION BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

This Section 8 WARRANTY: DISCLAIMER OF WARRANTY sets forth Dimation's exclusive liability and Buyer's exclusive remedies for any breach of warranty or any claim based on failure, defect in or non-conformity of the Product(s) or Services under this contract irrespective of when and how the failure or defect arises and regardless of whether the claim is represented as arising out of contract, warranty, indemnity, tort, strict liability or otherwise.

Buyer acknowledges and understands that except as specifically set forth or referenced in this paragraph, DIMATION MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND whether EXPRESS, STATUTORY OR IMPLIED INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. DIMATION ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR A THIRD PARTY MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO DIMATION BY BUYER OR ON BEHALF OF THE BUYER.

9. LIMITATION OF LIABILITY

IN NO EVENT SHALL BUYER, BUYER'S CUSTOMER OR ANY THIRD PARTY BE ENTITLED TO AND DIMATION SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR CONTINGENT DAMAGES OF ANY NATURE, AS DEFINED IN THE UCC OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF CAPITAL, DOWNTIME COSTS, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES EVEN WHERE DIMATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. This limitation will be enforced regardless of whether Dimation has defaulted in its warranty or other obligations hereunder. Dimation's right to indemnification shall remain unaffected regardless of any legal inability to limit or restrict the right of Buyer or a third party to such damages. Under no circumstance will Buyer's recovery from Dimation and Dimation's liability to Buyer exceed the purchase price of the Product or cost of the Service which gave rise to the claim, irrespective of the nature of or basis for the claim (whether the claim sounds in contract, warranty, indemnity, tort, strict liability or otherwise and irrespective of whether the claim is for non-delivery or other non-performance, defective performance, non-conforming goods, defective goods or otherwise). Dimation shall have no responsibility or liability for the content or use of advice, assistance or information, technical or otherwise, offered or given to Buyer without charge but which is not required for the work scope under this Contract. Buyer retains sole legal responsibility and liability for the design specifications and performance of the Goods that are the subject of this transaction. Dimation assumes no responsibility or liability for the selection of materials and components that are the subject of this transaction. Buyer shall be solely responsible to ensure that materials selected for goods to be assembled or customized by Dimation meet any regulatory requirements or specifications including but not limited to the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS Directive). Buyer will confirm the veracity of any statements made by Dimation personnel or specifications with the manufacturer of the materials or components used by Dimation in the Products supplied Buyer hereunder

10. INDEMNIFICATION

Buyer shall defend, indemnify, and hold harmless Dimation(and its employees, representatives, and agents) from and against all claims of any kind, whether based on contract, tort or otherwise, for any losses, expenses, damages, penalties, fines and sanctions of any kind (including, without limitation, interest, attorney's fees, custom duties, taxes, or other



governmental sanctions), and liabilities (special, indirect, incidental, consequential or contingent) resulting from, related to, or arising out of any breach of any representation, warranty, or covenant of the Buyer or its affiliates under this transaction or arising out of any assertion that any Products manufactured or Services performed by Seller for Buyer hereunder (or the act of manufacturing such Products or performing such Services) infringes or misappropriates any patent, copyright, trade secret or other proprietary right of a third party where the Product was manufactured or the Service performed according to drawings, specifications, designs or other information provided by Buyer to Dimation or arising out of any use of the Products or consumption of the Services by Buyer or others or otherwise based on events occurring subsequent to delivery by Dimation to Buyer hereunder except for events caused solely by defects in materials or workmanship or by the sole negligence of Dimation, which shall be governed by the provisions limiting liability set forth in Section 9 LIMITATION OF LIABILITY or elsewhere in this document.

11. LIMITATION OF USE

Buyer understands and agrees that ALL PRODUCTS and SERVICES provided hereunder are NEITHER RECOMMENDED NOR AUTHORIZED BY DIMATION FOR USE IN LIFE SUPPORT, SURGICAL IMPLANTATION, NUCLEAR, OR AIRCRAFT APPLICATIONS OR ANY OTHER USE OR APPLICATION WHEREIN THE FAILURE OR MALFUNCTION OF A SINGLE COMPONENT CAN RESULT IN A LOSS OF LIFE OR SUBSTANTIAL HARM TO PERSONS OR PROPERTY. Buyer agrees to fully indemnify, defend and hold Dimation harmless from and against any and all claims, damages, loss, cost, expense or liability arising out of, in connection with or related to the use of the Products and/or the result of Services provided to Buyer hereunder in the applications described in this Section 11 LIMITATION OF USE of this document.

11.01 BASIS OF THE BARGAIN

BUYER ACKNOWLEDGES AND AGREES THAT DIMATION HAS SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE SAME REFLECT AN ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

11.02 SUBSEQUENT/REPEAT ORDERS FROM BUYER

Subsequent orders (whether written or oral) submitted by Buyer for additional quantities of the Product(s) and/or Services of the kind described in this Agreement, such additional orders shall be subject to these Terms and Conditions even where such additional orders are for a different price. Any different or additional terms and conditions contained in subsequent/repeat orders from Buyer will be of no binding effect and are hereby rejected.

12. ITAR/GOVERNMENT USE

In the event that certain of the Products or Services supplied under this transaction are categorized as Defense Articles by the U.S. Department of State and are subject to the International Traffic in Arms Regulations (or ITAR) and Buyer's Order is placed under a contract with the United States Government, Dimation agrees to comply with those terms and conditions and other contract provisions and regulations that it must comply with under the law and of which Buyer has placed Dimation on notice at the time of order placement. All rights to and in Dimation's technical data owned or licensed by Dimation are hereby reserved and deemed restricted or limited. Except as expressly set forth in this Section, no provision or term in Buyer's contract with the Government shall be binding on Dimation.

13. U.S. GOVERNMENT CONTRACTS / SUBCONTRACTS

If Buyer's Order is for Products and/or Services that will be directly or indirectly used in the performance of a contract or subcontract with the U.S. Federal government and except where Dimation is otherwise notified by Buyer in writing, the Products to be supplied by Dimation hereunder are "commercial items" and/or "commercially available off-the-shelf (COTS) items" as defined in the Federal Acquisition Regulation ("FAR"), 48 CFR Part 52. Accordingly, only those



mandatory flow-down provisions of applicable U.S. government procurement regulations that are required by federal statute to be included in U.S. government subcontracts and only to the extent applicable to the sale of COTS and/or commercial items shall be incorporated into these Terms and Conditions by reference. Furthermore, Dimation warrants that the Products (or "Goods") and Services covered under this Section 13 U.S. GOVERNMENT CONTRACTS / SUBCONTRACTS are priced at the same rate and in the same manner as Dimation's comparable commercial agreements/contracts for similar goods and services.

14. EXPORT CONTROL LAWS: Both Parties agree and understand that the information provided or furnished and/or to be provided or furnished hereunder, including, but not limited to, Confidential Information (as the term is used in Section 17 of this Agreement) or any direct product thereof, and the Products (or Goods) or the results of the performance of Services hereunder, or the technology and information related to such Products and Services is subject to the then current export and import laws and regulations of the United States and such other governments as are applicable when the Products (or Goods), Services or Technology are delivered by Dimation to Buyer including, without limitation, the Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce, International Traffic in Arms Regulations ("ITAR") under the U.S. Department of State, and embargo controls administered by the U.S. Department of the Treasury's Office of Foreign Asset Controls ("OFAC") and may be subject to export or import regulations in other countries. Each Party to this Agreement shall not, and shall not allow any third party, to remove or export, re-export, import, or disclose via any means the Confidential Information, information classified as technical data or any part thereof (i) into (or to a national or resident of) any embargoed or terrorist supporting country, (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country (or to a foreign national or resident of such country including foreign nationals employed by or associated with the Party) to which such export or re-export, removal, or disclosure is restricted or prohibited or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) in violation of any export or import restrictions, laws, or regulations of any United States or foreign agency or authority. Each Party represents and warrants that (i) it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list and (ii) it shall provide the other Party with written notice containing the nature of any export controlled information, including Export Control Classification Number (ECCN) or United States Munitions List (USML) category, prior to furnishing of such export controlled Confidential Information to the other Party. Each party shall indemnify and hold the other party harmless for all claims, demands, damages, costs, fines penalties, attorney's fees, and all other expenses arising from a failure of the other party to comply with this Export Control clause of this Agreement.

15. GOVERNING LAW AND CHOICE OF FORUM

The Contract and any disputes hereunder shall be governed by the laws of the State of Minnesota without regard to the principles of conflict of laws. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. It is further agreed that all disputes and matters whatsoever arising under, in connection with or incident to this Agreement, shall be instituted, commenced and litigated, if at all, exclusively in and before a state Court located in the County of Scott in the State of Minnesota or, in the case of federal jurisdiction, federal Courts located in the County of Hennepin, in the State of Minnesota, and any appropriate appellate Court thereof, to the exclusion of the courts of any other state, territory, country or other jurisdiction, and the parties hereby waive the right to change such venue and hereby consent to the jurisdiction of such courts.

16. INTELLECTUAL PROPERTY RIGHTS

Buyer acknowledges that Dimation is the owner of patents, designs, brands, trademarks, copyrights, trade secrets and other intellectual property rights relating to Dimation's capabilities in providing the Products and performing the Services hereunder. No intellectual property right or license is conveyed under this contract. Buyer may not use Dimation's trademarks, service marks or other intellectual property rights without Dimation's prior written consent.

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Buyer understands and agrees that Dimation cannot make an investigation as to whether the prototype, schematic, information, specifications or other materials supplied by Buyer to Dimation (collectively "Buyer materials") or the use, implementation, development or modification of said Buyer materials by Dimation in connection with the design, prototype, process or manufacture requested by and to be delivered to Buyer hereunder (the "Work Product") requested by Buyer from Dimation will utilize or infringe the intellectual property rights of any third party in patents, trade secrets, copyrights, mask works or other intellectual property ("Third Party Proprietary Rights"). Therefore, Dimation shall not be liable, and Buyer shall indemnify and hold Dimation harmless against all losses and expenses incurred by Dimation as a result of any claim for infringement of said Third Party Proprietary Rights in connection with the Work Product, or claims of inducement of infringement or contributory infringement resulting from the implementation, use, development or modification of any such Work Product by Buyer or Buyers of Buyer.

17. PROTECTION AND USE OF CONFIDENTIAL INFORMATION

Except as required by law, the Buyer shall not disclose any of the terms and conditions of any accepted Order, including any price terms, to any third party for any reason whatsoever. The Parties agree that all information provided, disclosed or obtained by a receiving party from the providing party in connection with this Contract or the performance of any of the Parties' activities under this Contract including, without limitation, business and technical information contained in attachments, exhibits, supplements, appendices, addenda, drawings, notes, instructions, statement of work, manuals provided by one party to the other, whether prepared by the party or third parties, contains information which embodies confidential know-how and trade secrets of substantial commercial value to the providing party or third parties under contract to the providing party. Each receiving party agrees a) to keep all such information confidential and safeguard it against disclosure to any other person or entity; b) to use the information only in connection with the Products and/or Services supplied hereunder; and c) to not sell, lease, loan or otherwise permit any third party or entity to access, use or disseminate the information without the express written consent of the providing party. The restrictions of this Section 17 PROTECTION AND USE OF CONFIDENTIAL INFORMATION shall not operate in respect to information that is generally available to the public.

18. TERM / TERMINATION

Either Dimation or Buyer may voluntarily terminate this Contract at any time upon written notice to the other party, but all Orders previously submitted and confirmed shall remain binding upon the parties and subject to the Section 5 CANCELLATIONS/ CHANGE ORDERS of this contract. In no event shall the Term of this Contract be later than Buyer's acceptance of all Products and/or Services contemplated hereunder and full payment of the Contract Price to Dimation by Buyer or the voluntary termination of this Agreement as provided in this section, whichever occurs first. Termination shall be without prejudice to any rights or remedies Dimation or Buyer may have by reason of any breach of this Contract. Sections 3, 8, 9, 10, 11, 15, 16 and 17 shall survive the termination of this Contract. Each of the following shall be considered an "Event of Default" charged to the party triggering the event: a) breach of a party's obligations under Section 17 (PROTECTION AND USE OF CONFIDENTIAL INFORMATION); b) either party fails to perform any of its covenants, obligations, or responsibilities under this Agreement which failure remains uncured for thirty (30) days after written notice thereof from the non-defaulting party within ninety (90) days of the alleged default; c) the dissolution, termination of existence, liquidation, insolvency or business failure of either party, or the appointment of a custodian or receiver for either party or any part of its property if such appointment is not terminated or dismissed within sixty (60) days; d) the institution by either party or against either party of any proceeding under the United States Bankruptcy Code or any other federal, national or state bankruptcy reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally, which proceeding is not dismissed within sixty (60) days of filing. Upon the occurrence of an Event of Default, the non-defaulting party, in its sole discretion, shall have the right to terminate this Agreement, in addition to any other remedy or remedies which may be available to it under this Agreement, at law or in equity.

19. EXCLUSIVITY. This Agreement shall not impose any obligation of exclusivity on either party hereto, and each party shall be free to purchase and sell goods and services similar or identical to the Products from and to third parties, at



its sole discretion. This Agreement is neither a requirement nor an output contract. Notwithstanding the foregoing, in the event Seller provides customized or modified Products using specifications or modifications provided by Buyer (collectively, "**Custom Products**") or provides private labeled Products to Buyer ("Private Labeled Products"), Seller agrees that it shall not offer, sell or provide any such Custom Products or any Private Labeled Products to any party other than Buyer. By way of clarification, a Custom Product that is also a Private Labeled Product shall constitute a Custom Product for purposes of any Product return rights under this Agreement.

20. HEADINGS The section headings used in the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement.

21. SEVERABILITY If a court of competent jurisdiction finds any provision of the Agreement unlawful or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect.

22. SURVIVABILITY The rights and obligations of the Parties including, but not limited to, those addressing the following subjects: Prices, Payment terms, Price adjustments, Cancellations, Tooling, Warranty, Disclaimer of Warranty, Products/Prototypes, Limitation of Liability, General Indemnification; Intellectual Property Indemnification, Limitation of Use, Intellectual Property Rights, Protection and use of Confidential Information, Governing Law and Choice of Forum, Export Control Laws and any other right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.