

# **ROS TERMS AND CONDITIONS**

## **REMOTE OCEAN SYSTEMS, INC. TERM AND CONDITIONS OF SALE**

**NO WARRANTY, PROMISE OR REPRESENTATION AS TO ANY PRODUCT SOLD BY REMOTE OCEAN SYSTEMS, INC. (ROS), NOR ANY WAIVER OR MODIFICATION OF THE FOLLOWING TERMS AND CONDITIONS SHALL BE BINDING UPON ROS UNLESS REDUCED TO WRITING AND SIGNED BY AN AUTHORIZED OFFICER OF THE COMPANY.**

ROS shall be referred to herein as the "Seller".

### **1 END USE**

Any and all commodities, technology, or software exported from the US by Seller is done so in accordance with US Export Administration Regulations. Diversion contrary to US law is strictly prohibited.

### **2 DELIVERY**

Deliveries are subject to Seller's ability to source materials for manufacture of apparatus to be supplied and are subject to delays due to strikes, fires, transportation conditions, embargoes, acts of God, or any other cause beyond Seller's control. In cases where more than one instrument, part, or item is placed on the same order and only one shipping date for the entire order is specified, and in the absence of a specific schedule of shipments applied to each instrument, part, or item, Seller reserves the right to ship any part of the order in advance of the shipping date, and Buyer shall make payment in accordance with the terms specified below.

### **3 QUOTATIONS AND PRICES**

All prices are subject to change without notice. All orders calling for future delivery shall be billed according to the price in the Purchase Order and confirmed by the ROS Order Acknowledgement. Written quotations shall automatically expire sixty (60) days from the date issued, subject to earlier termination by notice within that period. All prices are quoted in US Dollars.

### **4 ORDER ACCEPTANCE**

Seller reserves the right to cancel any order after an order acceptance document has been provided to the Buyer, if Seller determines that the Buyer does not have suitable credit for the payment terms designated in the order acknowledgement.

### **5 ERRORS AND CHANGES**

Seller reserves the right to correct clerical or stenographic errors or omissions; also to make changes in design at any time without incurring any obligation to install same on units previously purchased.

## **6 SHIPMENT**

Ex. Works San Diego, California, U.S.A 92111. Buyer shall bear all shipping costs. Merchandise will be shipped surface freight, unless otherwise specified. Seller reserves the right to select final carrier of any shipment. Shipments are made to the common carrier in good condition. When transfer to the carrier is completed, Seller's liability for the merchandise ceases. All claims for damages and shortages must be filed by the Buyer directly with the transporting company within 15 (fifteen) days after delivery. All damage and shortages must be noted on the freight bill.

## **7 CONDITIONS**

No credit will be allowed for returns unless Seller's authority in writing has been first obtained. Only instruments and other products of current design in original cartons will be considered for credit, and when returned, a reasonable handling charge will be made to cover necessary inspection, adjustments, repackaging, and clerical work. Special orders are not subject to return for credit under any circumstances. A 1.5% (one point five percent) service charge per month will be charged on past due balances; however, in no event shall a service charge be assessed in excess of the maximum permitted under law.

## **8 CUSTOM MANUFACTURED OR SPECIAL PRODUCT**

ROS will always attempt to meet our Buyers' requirements and may custom-build or specially-configure equipment to specifications provided by the Buyer. ROS assumes no liability as to the suitability, applicability, or functionality of Buyer-provided specifications. This type of equipment may require additional time to quote and/or deliver. Acceptance of orders for custom or special equipment is contingent upon receipt of a Purchase Order and is both non-cancelable and non-returnable. Manufacture of special equipment will proceed when a written acknowledgement is received.

## **9 RETURNS**

In order to expedite parts returned to the factory for repair or credit, the Buyer must contact ROS Customer Service at +1-858-565-8500 to obtain a Return Material Authorization number. Goods shipped to the factory should be clearly identified with the assigned RMA number and freight is to be prepaid. All merchandise returned for credit is subject to a 25% (twenty-five percent) restocking and refurbishing charge.

If a warranty repair is required, the Buyer or authorized representative must contact ROS at (858) 565-8500 to obtain an RMA number; and to expedite processing, provide the following information (if possible):

1. Model number and serial number
2. Date of expected shipment to factory, original Purchase Order number, original Sales Order number
3. Details of the defect or problem

In all cases, shipments to the factory must have their freight prepaid by the Buyer to:

Remote Ocean Systems  
5618 Copley Drive  
San Diego, California U.S.A.  
92111-7902

## **10 CLAIMS**

Claims for shortages or rejections must be made in writing within the ten (10) days after receipt. No claims shall be made against Seller for expenses or loss resulting from infringement of patents in connection with the purchase, manufacture, or use of the goods and products herein described; and the Buyer shall hold Seller harmless against any expense or loss resulting from infringements of patents or trademarks arising from compliance with Buyer's design, specifications, or instructions. All equipment and technical data including instruction manuals are delivered to the Buyer for the sole purpose for which they are designed. The Buyer shall insure that Seller's products shall not be used in any other manner and that technical data and instruction manuals shall be used for the sole purpose of maintenance and repair of Seller's products. Even though patents and/or copyrights may or may not be applicable to Seller's products or technical data, the Buyer shall recognize that trade secrets are contained in both the above. The Buyer specifically agrees that it shall not, nor shall it permit, any other person or organization to copy, reproduce, or in any other manner take advantage of any of the designs used in Seller's products or technical data.

## **11 WARRANTY**

Seller's warranty, if any, with respect to equipment, components, or parts of Seller's manufacture is set forth in a warranty statement which accompanies Seller's products and constitutes an integral part of the sales contract. All parts not of Seller's manufacture shall carry the warranties of their respective manufacturers. Seller assumes no responsibility for consequential damages of any nature, and the Buyer, by acceptance of any equipment or components or of parts thereof, will assume all liability for the consequences of its use or misuse by the Buyer, his employees, or others. A defect in the meaning of Seller's warranty in any part of such equipment shall not, when such part is capable of being renewed, repaired, or replaced, operate to condemn such equipment. The warranty expressly set forth in such warranty statement is the only warranty, expressed or implied, as to the uninterrupted services of the goods covered by the warranty or their fitness for any particular purpose, and is expressly in lieu of all other warranties, guaranties, obligations, or liabilities expressed or implied by Seller or Seller's representatives. All statutory or implied warranties, other than Title, are hereby expressly negative and excluded.

Orders submitted on Buyer's own Purchase Order forms, which forms may contain statements, clauses, or conditions modifying, adding to; repugnant to, or inconsistent with the terms and provisions herein contained, will be accepted by Seller only upon condition and with the expressed understanding that notwithstanding any such statement, clauses, or conditions contained in any other forms of the Buyer, Seller's liabilities shall be determined solely by Seller's Terms and Conditions Of Sale, and in accepting and consummating any such order, Seller shall be deemed not to have in any way changed, enlarged, or modified Seller's liability or obligations as fixed by the Terms and Conditions Of Sale as stated herein, unless such acceptance of an order on Buyer's own Purchase Order forms shall have been executed by either the contract administrator designated by the President of ROS or by an officer of the corporation, and in either case, the title of the contract administrator or officer shall be indicated along with the signature.

Seller assumes no risk and shall be subject to no liability for damages or loss resulting from the specific use or application made of the products. Seller's liability for any claim, whether based on breach of contract, negligence, infringement of any rights of any party, or product liability, relating to the products shall not exceed the price paid by the Buyer to Seller for such products. In no event will Seller be liable for any special, incidental, or consequential damages (including loss of use, loss of profit, and claims of third parties) however caused whether by negligence of Seller or otherwise.

## **12 TERMS**

Seller's standard Terms of Sale are NET/30 (thirty) days from the date of shipment or date of invoice, whichever is later. Seller reserves the right to restrict the Terms of Sale or to require payment prior to the date of shipment if, in Seller's opinion, Buyer's financial conditions or other circumstances so warrant. Seller reserves the right to modify the Terms of Sale prior to order acceptance, with written notification to the Buyer.

In the event of the filing of any petition in bankruptcy by or against Buyer, or the appointment of a receiver or Buyer's insolvency, Seller may refuse to make further deliveries.

## **13 TAXES**

The Buyer shall pay any manufacturer, sales, or use tax hereafter imposed by any governmental authority, upon the goods and products herein described, or the production, sale, distribution, or delivery thereof, or upon any feature of this transaction.

## **14 CANCELLATION**

Cancellation of orders by the Buyer for special apparatus will not be accepted. Any order for Seller's standard products may not be canceled within 30 days of the accepted shipping date, or if delivery can actually be made within 30 days of the date on which cancellation is requested.

Otherwise, the order may be canceled in accordance with the following:

- (a) By mutual agreement of the Buyer and Seller.
- (b) If the items covered by the order are being purchased for ultimate delivery to the Government pursuant to a Government contract, or for use on a Government contract with or without other equipment, then it is agreed that any part or all of this order may be cancelled only in accordance with the cancellation provisions of the corresponding Government contract.

## **15 PARTIAL CANCELLATION**

Should a Purchase Order for custom equipment be cancelled by the Buyer prior to complete and full delivery, Buyer is responsible for paying Seller for all Time expended and all Materials ordered by Seller prior to the official Purchase Order cancellation. Time expended shall include at the total Burdened Labor expended in fulfillment of the entire Purchase Order. Material costs shall include all Materials ordered to fulfill the entire Purchase Order plus 15% for Material Handling expenses. This total shall be offset against any payments previously made by Buyer to Seller pursuant to the Purchase Order.

Should the Buyer purchase or accept less than the full Purchase Order quantity for Seller's standard products, if applicable, Seller reserves the right to increase the unit price to the list price when quantity discounts had been provided.

## **16 TITLE**

Title of goods or products sold hereunder shall remain with Seller, and such goods and products shall remain personal property until all payments under terms of purchase, including deferred payments, whether evidenced by noted or otherwise shall have been made in full in

cash; and the Buyer agrees to do all acts necessary to protect and maintain such title in Seller.

If Buyer defaults in the payment or performance of any term or condition of sale, Seller may retake possession of the goods or products sold hereunder, and for this purpose, Seller may peaceably enter upon the premises of the Buyer without judicial process. Whenever Seller, by reason of Buyer's default, shall have the right to retake possession, Seller shall serve written notice on Buyer at least five (5) days prior to the date set for repossession, setting forth therein the circumstances of default or breach. If Buyer then fails to cure said default or breach prior to the date set for repossession, title to the goods or products shall revert to Seller, and Buyer shall have no right of redemption. Nothing contained herein shall limit Seller's right to sue for and collect any unpaid purchase price, or to enforce any other remedy available to it hereunder or under the California Commercial Code.

## **17 CHOICE OF LAW**

These Terms and Conditions, and the accompanying Purchase Order shall be governed by the laws of the State of California.

## **18 ARBITRATION**

Any controversy, claim or dispute arising out of or relating to Buyer's purchase of goods from Seller, shall be settled solely and exclusively by binding arbitration in San Diego, California. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association ("AAA"). Each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator. The prevailing party shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs for the services rendered to such prevailing party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity; provided however, that nothing in this subsection shall be construed as precluding the bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law. If for any reason this arbitration clause because not applicable, then each party, to the fullest extent permitted by applicable law, hereby irrevocably waives all right to trial by jury as to any issue relating hereto in any action, proceeding, or counterclaim arising out of or relating to this contract or any other matter involving the parties hereto.

## **19 ENTIRE AGREEMENT**

These Terms and Conditions and the accompanying Purchase Order constitute the entire and sole agreement of the parties hereto with respect to its subject matter. It may be modified or amended only by a written instrument executed by the parties hereto. Buyer warrants that there have been no representations, warranties or promises outside of this agreement. This agreement shall take precedence over any other documents that may be in conflict with it.