L3 Technologies, Inc. - General Terms and Conditions of Sale

1. **Acceptance of Orders: L3 Technologies Inc. Narda-MITEQ Division ("L3")** All orders are subject to acceptance by both Buyer and Seller (collectively, "the parties").
2. **Software License (if applicable):** Subject to these terms and conditions, L3 Grants to Buyer a limited, personal, non-exclusive license ("the "License") for use only with the Product. This license may be transferred only upon transfer of the Product.
3. **Changes:** Buyer may at any time request changes to the order within the general scope of work called for. If such changes cause an increase or decrease in the price of the items, Buyer shall be notified to this effect, and Seller shall not be obligated to proceed with such changes until it receives a written change order, and agrees in writing to accept such change. Seller shall also be entitled to an extension of the delivery schedule as a result of such change(s).
4. **Taxes:** Prices stated do not include local, state or federal taxes. The amount of any sales, use or similar tax applicable to the sale of the items herein or to the use of such goods by the Buyer shall be paid by the Buyer, or in lieu thereof the Buyer will provide Seller with a tax exemption certificate acceptable to the taxing authorities.
5. **Title and Risk of Loss:** Title to the material shipped and all risks of loss pass to Buyer upon Seller's delivery to common carrier at Seller's plant. Shipping shall be EXWORKS Seller's Plant per the ICC INCOTERMS 2010.
6. **Packing, Packaging and Marking:** Seller will provide packing, packaging and marking in accordance with commercial practices at the quoted prices. Seller reserves the right to adjust the quoted price for any unique or special requirements requested by the Buyer.
7. **Disputes:** The parties agree that all disputes in any way relating to, arising under, connected with, or incident to this contract, and over which the federal courts have subject matter jurisdiction, shall be litigated, if at all, exclusively in the United States District Court for the State of New York, and if necessary, the corresponding appellate courts. The parties further agree that all disputes in any way relating to, arising under, connected with or incident to this contract, and over which the federal courts do not have subject matter jurisdiction, shall be litigated, if at all, exclusively in the Courts of the State of New York, in Kings County, and if necessary, the corresponding appellate courts. The parties also agree that New York law excluding conflicts of law, exclusively shall govern all terms of this contract, including the paragraph. The parties expressly submit themselves to the personal jurisdiction of the State of New York.
8. **Delivery:** The delivery date is L3's best estimate of the time required to make shipment, but L3 shall not be liable for loss or damage, direct, consequential or otherwise, for failure to meet this date. Seller reserves the right to deliver early. In no event shall L3 be in default by reason of any failure or delay in its performance under this order arising from any cause beyond L3's control and without its fault or negligence, including but not limited to acts or omissions of the Buyer, acts of God or the public enemy, acts of any government agency or authority, fires, floods, epidemics, quarantine restrictions, strikes, labor disturbances, freight embargoes, public disorders, riots or unusually severe weather, or subcontractor delays which are beyond the control of the subcontractor.
9. **Terms of Payment:** Unless stated differently on the face of this order, payment terms are net thirty (30) days from date of invoice, with no discount for earlier payment. If Buyer fails to pay the total amount of an invoice within thirty (30) days of the date of such invoice, interest compounded at the rate of one percent (1%) per month shall be added to all amounts unpaid and outstanding. If Buyer fails to make any payment to L3 as required hereunder, L3 shall have the right exercisable in L3's sole discretion, in addition to other rights and remedies, to cease further performance under this Order.
10. **Foreign Currency Considerations:** Buyer acknowledges that foreign exchange rates may have an adverse financial impact on Seller if payment is not received within thirty (30) days of invoice submission or if Seller is unable to complete the Milestone Payment Event within the planned date specified in the Schedule for a given Milestone Payment Event through no fault of Seller. For any such event, Buyer agrees that, in addition to other rights contained within the Contract, Seller shall be entitled to an equitable price adjustment associated with the adverse foreign exchange impact upon reasonable justification of the impact furnished by Seller.
11. **Cancellation:** Orders accepted by Seller are not subject to cancellation by Buyer except with written consent of Seller. In the event of cancellation, Buyer will be advised of applicable cancellation charges, which may include charges for raw material, work in process and finished goods applicable to the order, together with applicable overhead and allowance for profit.
12. **Intellectual Property:** All rights and interest to the inventions, information, technical data or drawings, copyrights rights, patent rights, trademark rights, know-how, trade secrets, related intellectual property, intangible and proprietary rights throughout the world, relating to the Product or Software or disclosed to Buyer in connection with any order or proposal, are the exclusive property of Seller ("Owned Assets"). Buyer shall not (a) Decompile, reverse engineer, disassemble, trace or otherwise analyze the Product or Software, their content, operation, or functionality; (b) Modify, adapt, or translate the Product or Software, nor create derivative works based on the Product or Software; or (c) Disclose any proprietary information regarding the Owned Assets to any other persons or companies without Seller's prior written approval.
13. **Inspection and Acceptance**: Acceptance shall occur upon delivery to the FOB point and will be presumed unless Buyer demonstrates within fourteen (14) days thereafter that the Product does not conform to the Warranty set forth herein. Buyer agrees to make inspection of the Products delivered hereunder immediately upon receipt thereof.
14. **Buyer Property**: L3 shall not be liable for loss or destruction or damage to Buyer property, including property which is the subject of this order, whether owned by Buyer, the US Government, or others, except to the extent that L3 is reimbursed or compensated for any loss of or destruction of or damage to such Buyer property or which results from willful misconduct or lack of good faith on the part of L3 managerial personnel.
15. **Export Control**: This Order is subject to all applicable US Laws and regulations relating to the export of the Product. Buyer shall not ship, transfer, export, or use the Product in violation of applicable export laws, regulations or restrictions.
16. **Indemnity**: Buyer shall defend, indemnify, and hold harmless L3, its parents, subsidiaries and affiliates, and their respective directors, officers and employees and representatives, from and against any and all claims, suits, losses, obligations, causes of action, damages, and expenses (including attorney's fees) relating to or arising out of any use of the Product by Buyer to its Customers.
17. **Limitation of Liability:** IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, MULTIPLE OR PUNITIVE DAMAGES, OR ANY DAMAGE DEEMED TO BE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THE CONTRACT, WHETHER BASED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY

CONFLICTS WITH ANY OTHER PROVISION(S) OF THIS CONTRACT, SAID PROVISION(S) SHALL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION. IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF SELLER OR ITS SUBCONTRACTORS OR SUPPLIERS OF ANY TIER WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR THE PERFORMANCE OR BREACH OF THE CONTRACT OR ANYTHING DONE IN CONNECTION THEREWITH EXCEED THE CONTRACT PRICE. NOTWITHSTANDING ANYTHING ELSE IN THE CONTRACT TO THE CONTRARY, THE STATED MONETARY LIMITATION HEREINABOVE IS THE MAXIMUM LIABILITY SELLER HAS TO THE BUYER.

18. **Applicable Law:** This Purchase Order shall be governed by the Laws of the State of New York, United States of America.
19. **Warranty:**
    a) L3 warrants to the purchaser that each of its products, when shipped will be free from defects in material and workmanship and will perform in full accordance with applicable specifications. The limit of liability under this warranty is at L3's option to repair or replace any product or part thereof within one year of delivery unless otherwise specified on individual purchase orders. Products shall be returned by the purchaser to L3 Narda-MITEQ, at 435 Moreland Rd., Hauppauge, New York, 11788, and shall, as determined by examination by L3, prove defective in material and/or workmanship. Warranty returns must first be authorized in writing by L3. Disassembly of any L3 product by anyone other than an authorized representative of L3 voids this warranty in its entirety. L3 reserves the right to make changes in any of its products without incurring any obligation to make the same changes on previously delivered products.
    b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE LIMITED TO THE REPAIR OR REPLACEMENT, AT L3'S OPTION OF THE DEFECTIVE PARTS. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING PERFORMANCE OR CUSTOM AND USAGE IN THE TRADE. L3 SHALL HAVE NO OTHER LIABILITY UNDER ANY THEORY AT LAW, INEQUITY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT, (INCLUDING INTELLECTUAL PROPERTY INFRINGEMENT AND NEGLIGENCE), AND STRICT LIABILITY, FOR ANY LOSS OR DAMAGES INCLUDING, BUT NOT LIMITED TO, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, OR CONSUQUENTIAL DAMAGES (EVEN IF L3 HAS BEEN ADVISED OF SAME) INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUES. ANY ACTION AGAINST L3 MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CLAIM AROSE.
    c) In the event Seller repairs or replaces a defective item under the foregoing warranty, the warranty period for the repaired or replacement item shall extend for the remaining warranty period of the original product. However, the original warranty period shall be extended by the number of calendar days required to repair or replace the defective item, calculated from the date of receipt of the defective item by the Seller until return of the repaired or replacement item to the Buyer.
20. **Obsolescence of Parts:** While Seller intends to provide parts in accordance with original design requirements, Seller reserves the right to make part substitutions provided the substituted part has the same form, fit and function as the item it replaces.
21. **General:** The provisions of this Agreement are severable and the invalidity, illegality or unenforceability of any one or more of its provisions shall not affect the validity and enforceability of any other provisions. If any provision of this Agreement is declared to be invalid, illegal, or unenforceable the parties agree that the court of competent jurisdiction should substitute a valid and enforceable provision that to the maximum extent possible in accordance with all applicable law, preserves the legal and economic positions of each party as intended in this Agreement. Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement. Buyer shall not assign or otherwise transfer, whether by contract, operation of law or otherwise, this Agreement or any of the rights or duties set forth herein without the prior written consent of L3, which consent may be withheld by L3 in its sole discretion. A waiver of L3 of any default by Buyer or of any of the terms and conditions shall not be deemed to be a continuing waiver or a waiver of any other default or of any other of these terms and conditions. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous proposals, negotiations, understandings and agreement, whether oral or written, relating to the subject matter hereof. This Agreement shall not be released, discharged, waived, abandoned or modified, in whole or in part, except by a written instrument duly executed by both parties.
22. **Amendments of These Terms:** These terms can only be changed by mutual agreement of the parties