



Bullen Ultrasonics, Inc. Terms and Conditions of Sale

The quotation, acknowledgment or other document (“**Attachment**”) issued by Bullen Ultrasonics, Inc. (“**BUI**”) and included with these Terms and Conditions of Sale (the “**Terms**”) evidences the offer or agreement by BUI to provide the goods and/or services specified on the face of the Attachment (the “**Product**”) to the party to whom the Attachment is addressed (“**Buyer**”) in accordance with and subject to these Terms (the Terms, collectively with the terms and conditions on the face of the Attachment, the “**Contract**”). The Contract, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Contract, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the agreement between BUI and Buyer. The Contract expressly limits Buyer’s acceptance to the terms of the Contract. These Terms prevail over any terms or conditions contained in any other documentation other than the Attachment, and expressly exclude any of Buyer’s general terms and conditions of purchase or any other document issued by Buyer in connection with the Contract, which are not accepted by BUI even by BUI’s failure to object to such terms.

1. Prices; Delivery. Prices and terms of delivery are based on specifications, costs and conditions existing on the date of the Attachment and must be accepted by Buyer within the limits of time and quantity stated on the Attachment, if any. The prices stated in the Attachment do not include any sales, use or other taxes unless so stated specifically. Such taxes will be added to invoice prices in those instances in which BUI is required to collect them from Buyer; provided, however, that if BUI does not collect any such taxes and is later asked by or required to pay the same to any taxing authority, Buyer will make such payment to BUI or, if requested by BUI, directly to the taxing authority. At BUI’s option, prices may be adjusted to reflect any increase in the costs of BUI resulting from state, federal or local legislation, or any change in the rate, charge, or classification of any carrier. Unless otherwise specified by BUI, all prices are F.O.B. BUI’s factory or warehouse from which shipment is made, and payment will be net/cash 30 days from date of invoice. Invoices unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of the rate specified in an Attachment, if any interest rate is so specified, or the maximum allowable interest rate under applicable law, and Buyer shall be responsible and liable for all expenses incurred by BUI in collection, including reasonable attorneys’ fees. Buyer agrees to pay in full for the Products without retainage or the right of set-off or back charges or similar charge without Buyer’s written consent. If Buyer fails to pay invoices when due or if BUI has reasonable doubt of Buyer’s ability to pay at any time, BUI may demand advance payment for subsequent deliveries or suspend or terminate performance without penalty. Buyer agrees to comply with any other pricing terms or conditions contained in any Attachment.

2. Delivery; Title; Risk of Loss. Unless otherwise specified in the Attachment, all delivery dates are approximate, and BUI shall not be responsible for any damages of any kind resulting from any delay. A delay in delivery shall not constitute a breach of contract and shall not entitle Buyer to avoid or cancel the Contract or to any other remedy. Where the Products are to be delivered in installments, each delivery shall constitute a separate contract and failure by BUI to deliver any one or more of the installments in accordance with these Conditions or any claim by Buyer in respect of any one or more installments shall not entitle Buyer to treat the Contract as a whole as repudiated. Unless otherwise specified in the Attachment, title to any Products and risk of loss or damage thereto shall pass to Buyer upon tender to the carrier at the factory or warehouse of BUI. BUI is not required to provide formal notification to Buyer of shipment when shipment occurs within the stated scheduled ship date on the Attachment. No deferment of shipment at Buyer’s request beyond the respective dates indicated will be made except on terms that will indemnify BUI against all loss and additional expense, including, but not limited to demurrage, handling, storage and insurance charges.

3. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence (“**Force Majeure Event**”), including, but not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion,

epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances.

4. Spoilage. Buyer shall, for Buyer supplied material to be incorporated in the Products, provide ample material allowance for reasonable spoilage in manufacturing. Buyer materials supplied must be suitable for the purposes intended and methods employed by BUI. BUI shall not be responsible for risk of loss or damage to any materials supplied to BUI by Buyer, whether such loss or damage occurs in or outside the course of normal manufacturing.

5. Limited Warranties. BUI warrants that all Products manufactured or serviced by BUI in accordance with project specifications and sold hereunder will be free from defects in form and workmanship when said Products are derived from materials supplied by the Buyer, and in form, workmanship and materials when said Products are derived from BUI supplied materials. Buyer’s sole remedy for breach of the foregoing warranties is replacement of or credit for defective Products, conditioned upon BUI receiving prompt notice of such defect, within an acceptance period not to exceed 30 days from BUI’s shipment. The foregoing shall also constitute the exclusive remedy to Buyer or anyone purchasing Products from Buyer, directly or indirectly. BUI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH HEREIN, AND HEREBY SPECIFICALLY NEGATES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER.

6. Limitation of Liability. IN NO EVENT SHALL BUI BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, COMMERCIAL LOSS, LOST PROFITS, OR CLAIMS FOR LABOR, ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT BUI’S WRITTEN CONSENT, WHETHER BUYER’S CLAIM IS FOUNDED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYER’S REMEDIES SPECIFIED IN PARAGRAPH 5 ARE BUYER’S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL BUI’S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED.

7. Claims by Buyer. Buyer must notify BUI of any claims for nonconforming or defective Products within 30 days after the date within the applicable warranty period on which the nonconformity or defect was or should have been discovered by Buyer or Buyer’s representative, or else Buyer’s claim will be barred. In addition, BUI must be given an opportunity to investigate the claim before Buyer disposes of the Products, or else Buyer’s claim will be barred. Any lawsuit or other action by Buyer based upon breach of the Contract must be commenced within one year from the date of delivery by BUI or, in the case of a cause of action based upon an alleged breach of warranty, within one year from the date within the applicable warranty period on which the defect is or should have been discovered by Buyer or Buyer’s representative.

8. Indemnification. Buyer shall defend, indemnify and hold harmless BUI, its affiliates, successors and assigns, and their respective directors, officers, shareholders and employees and BUI's customers (collectively, "Indemnitees") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys' and professional fees and costs, or the cost of enforcing any right to indemnification hereunder (collectively, "Losses"), howsoever arising (whether in contract, tort, or otherwise and including, but not limited to, liability arising from the negligence of BUI or from the negligence of any person for whom BUI is vicariously liable), arising out of or in connection with (i) any defect in the Products; (ii) any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the installation or supply of Products or their use or resale; (iii) any claim for infringement or misappropriation of any patent, copyright, trade secret or other industrial or intellectual property rights of any third party which arises from BUI's use of Buyer's designs, drawings, specifications, tooling or materials, or possession of the Products; and/or (iv) Buyer's negligence, willful misconduct or breach of the Contract. Buyer shall not enter into any settlement without BUI's or Indemnitee's prior written consent.

9. Termination and Cancellation of Contract. Notwithstanding anything in the Contract to the contrary, BUI may terminate the Contract, without cause and for convenience, in whole or in part, including, but not limited to, by reduction of the quantities to be delivered, at any time or from time to time effective upon oral or written notice to Buyer. Upon such termination, BUI shall have no further obligation with respect to the Contract, nor shall BUI be liable for damages of any kind, including, but without limitation, consequential damages, incidental damages, or lost profits. After acceptance by BUI, the Contract shall not be subject to cancellation by Buyer except with BUI's consent and upon terms that will indemnify BUI against all direct, incidental and consequential loss or damage. Buyer acknowledges that the Products are being specially manufactured or serviced to Buyer's specification, and further agrees that in the event of termination or cancellation of the Contract by Buyer, Buyer shall be liable to BUI for all incurred costs associated with the procurement, assembly and manufacture of all materials and goods having specific conversion activities completed in partial or total toward the Buyer's specification.

10. Intellectual Property; Tooling. Buyer acknowledges that it does not have any existing right, title, or interest in or to any intellectual property related to the Products or designs provided in connection with the Contract except for the specifications created by Buyer without any use of or reference to the intellectual property of BUI and provided to BUI. The Contract does not convey any proprietary interest in any intellectual property of BUI related to the Products or the designs provided in connection with the Contract, or grant Buyer any rights of ownership or to the use of these designs. Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of BUI furnished to Buyer shall be deemed to be incorporated herein by reference to the same as if fully set forth. Buyer acknowledges that engineering and tooling used for manufacture of the Products are proprietary to BUI and shall remain in BUI's possession for exclusive use on Buyer's goods. Exclusive use and non-disclosure shall remain in effect for a period not to exceed two years from date of last use. BUI reserves the right to dispose of engineering and tooling in its possession that has been inactive for two years from last date of use. BUI provides no warranty of non-disclosure, as it relates to engineering and tooling, for designs closely approximate or

equal to those for which the two year period has passed and solicitation of BUI to provide like design(s) has occurred.

11. Confidential Information. All non-public, confidential or proprietary information of BUI, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by BUI to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Contract is confidential, solely for the use of performing the Contract and may not be disclosed or copied unless authorized by BUI in writing. Upon BUI's request, Buyer shall promptly return all documents and other materials received from BUI. BUI shall be entitled to injunctive relief for any violation of this paragraph.

12. Compliance with Law. Buyer is in compliance with and shall comply with all applicable laws, regulations and ordinances. Buyer has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Contract.

13. Cumulative Remedies. The rights and remedies under the Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

14. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Contract shall be construed as creating any agency, partnership, joint venture, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Contract unless otherwise specifically set forth therein.

15. No Third-Party Beneficiaries. The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

16. Amendments and Modifications; Waiver; No Assignment. No change, modification or amendment to the Contract is binding upon BUI unless it is in writing, specifically states that it amends the Contract, and is signed by an authorized representative of BUI. Failure or inability of either party to enforce any rights hereunder shall not waive any right with respect to any other failure or future rights or occurrences. Buyer shall not assign or transfer (whether by merger, operation of law, or otherwise) its rights or delegate its duties under the Contract without the prior written consent of BUI.

17. Entire Agreement; Severability. The Contract contains the entire agreement between BUI and Buyer and constitutes the final, complete and exclusive expression of the terms of the agreement, all prior or contemporaneous written or oral agreements and negotiations with respect to the subject matter hereof being merged herein. If any term or provision of the Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

18. Governing Law. All matters arising out of or relating to the Contract shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provisions Any legal suit, action or proceeding arising out of or relating to the Contract shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in Preble County or Montgomery County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.