



DataRay Inc.

Beam Profiling ... Engineered as a system ...
Delivered as a Solution

STANDARD TERMS & CONDITIONS OF SALE

GENERAL INTERPRETATION AND COMPLETENESS: This contract is deemed made in the State of California and shall be interpreted under the uniform commercial code and other laws of California in force, at the date of contract. Parties agree that any dispute arising under this contract be adjudicated under the courts in the State of California and the parties expressly consent to the jurisdiction of the State of California for this purpose. The final, entire agreement pertaining to the sale to Buyer of the Goods described herein by DataRay Inc. ("Seller") is set forth on the face and reverse sides hereof; any prior understandings, agreements and representations, oral or written, shall be deemed superseded and merged in this contract. Agents and salesman of Seller have no authority to make any representations not included herein. Seller hereby rejects any different or additional terms previously or hereafter proposed by a Buyer, none of which shall be effective unless embodied in writing signed by an authorized employee of Seller.

PRICE: The Goods and other items or services covered by this contract shall be sold and invoiced at Sellers prices and charges in effect at the time of each shipment of Goods under this contract. Seller reserves the right to change, without notice the published list prices reference on the face of this contract. Prices do not include sales, excise, use or other taxes (other than based on income) now in effect or hereafter levied by reason of this transaction. Buyer shall pay all such taxes.

PAYMENT TERMS: A. Payment terms are net 30 days from date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, Sight Draft, Letter of Credit or Payment in Advance. If shipments are delayed by Buyer, payment shall be made based on the contract price and percent of completion. Buyer shall be liable for the price of all products substantially conforming to the contract, notwithstanding that Buyer may not have accepted, or may have revoked acceptance of same.

B. If payment is not received by the due date, a service charge will be added at a rate of 12 half percent per month (18 percent per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof.

C. Remittances will be received by a bank simply as a clearing agency. The receiving bank has no authority to determine whether or not the amount remitted constitutes payment in full. Remittances marked to indicate payment in full will be deposited by the bank notwithstanding such markings and such deposits shall not indicate our acceptance of the remittance as payment in full unless the remittance actually constitutes payment of all sums owed.

CREDIT: Seller may, at any time and at its sole discretion, limits or cancel credit of Buyer and as a consequence, may demand payments in cash before delivery of any unfilled portion of this contract, and may demand assurance of Buyer's due performance. Upon making such demand, Seller may suspend production, shipment and/or deliveries. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to agree and comply with such different terms of payment, and/or fails to give adequate assurance of due performance, Seller may (1) by notice to Buyer treat such failure or refusal as a repudiation by Buyer of the portion of the contract not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable or, (2) make shipments under reservations of security interest and demand payment against tender of amounts, all collection costs, including attorney's fees, shall be payable by Buyer. Buyer hereby represents that Buyer is now solvent and agrees that each acceptance of delivery of the Goods sold hereunder shall constitute reaffirmation of this representation at such time.

SEVERAL SHIPMENTS: Seller may make delivery in installments and may render a separate invoice for each installment, which invoice shall be paid when due, without regard to subsequent deliveries. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept delivery of remaining installments. Any delivery not in dispute shall be paid for on the due date, as provided in this contract, without offset defense or counterclaim and regardless of controversies relating to other delivery or undelivered products.

TITLE, RISK OF LOSS, INSURANCE: Title to each shipment of the Goods sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer, or his agent, but such shipment shall remain subject to Seller's rights of stoppage in transit and of reclamation. If a strike, embargo, governmental action, or any other cause beyond Seller's control prevents shipment or delivery to Buyer or his agent, or if shipping instructions for any shipment are not received before shipment date, or if payment is to be made on or before delivery, title and risk of loss shall pass to Buyer as soon as the shipment has been set aside by seller and invoiced to Buyer (subject to Seller's rights as an unpaid Seller) and payment shall be made in accordance with invoice as though the Goods had been shipped and accepted by Buyer and Seller shall be under no duty to carry insurance thereafter.

CONSIGNED GOODS: Buyer acknowledges that certain Goods provided by Seller may be supplied on a consignment basis. In the event any Goods are designated on the face of this form as consigned Goods, then Buyer agrees to execute all documents provided by Seller necessary to effectuate the consignor-consignee relationship and, in addition to any terms and conditions of consignment, specifically agrees that Seller shall retain title to all consigned Goods until such time as Buyer sells such Goods to its customers, at which time title shall pass directly from Seller to the respective customers. Buyer shall keep a current and accurate inventory and record of all consigned Goods and shall permit Seller or Seller's representative to inspect said records and said Goods at any reasonable time upon demand.

ACCEPTANCE: (1) Buyer shall accept any tender of the Goods by Seller which substantially conform to the description of the Goods set forth herein. (2) Buyer shall be deemed to have accepted any product and Buyer's right to cancel, reject or claim any damages for breach of warranty or breach of Seller's obligation under this contract shall

cease, unless Buyer gives Seller notice in writing of Seller's breach: (a) in the case of defects discoverable through inspection, 14 days after arrival of the shipment or (b) in the case of defects not discoverable through inspection, 30 days after invoice date. (3) In the case of non-conforming Goods, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Goods and acceptance of any non-conforming shall constitute a waiver by Buyer of specification requirements for said Goods (4) In any event, when the product shall have been altered from its original state, Buyer shall be deemed to have accepted the product. Buyer's acceptance of Goods tendered under this contract shall be final and irrevocable.

DELIVERY: Seller will use every reasonable effort to effect shipment on or before the date indicated. Seller shall not be liable, directly or indirectly for any delay or failure in performance or delivery or inability to perform or deliver where such delay, failure or inability arises or results from any cause beyond seller's control or beyond the control of Seller's suppliers or contractors, including, but not limited to, strike, boycott or other labor disputes embargo, government regulation, inability or delay in obtaining materials. In no event shall Seller, in the event of delays or otherwise, be liable to Buyer or any third parties for any consequential, special, or contingent damages. In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances; and Seller shall also have the right, to the extent necessary in Seller's reasonable judgment, to apportion fairly among its various customers in such manner as Seller may consider equitable, the Goods then available for delivery. If as a result of any such contingency, Seller is unable to perform, the contract shall be deemed terminated with out liability to either party, but shall remain in effect as to the unaffected portion of the contract, if any.

SELLER'S LIABILITY: If Buyer timely notifies Seller under the terms hereof (which notice shall be in writing sent by registered mail) of a claimed defect, Buyer shall concurrently in writing offer Seller opportunity to investigate the claim and to inspect allegedly defective Goods. If Seller determines that Buyer's claim is valid, Seller may repair the defective Goods or replace the defective Goods with conforming Goods at the F.O.B point specified in this contract. Failure to offer Seller such opportunity shall constitute acceptance by Buyer and waiver of all claims for defects. Seller's liability for damages on account of a claimed defect in any product delivered by Seller shall in no event exceed the purchase price of the product on which the claim is based. Replacement of defective Goods or repayment of the purchase price for any such product will be made only upon return of the defective product. Specifically, and without limiting the generality of the foregoing, Seller shall not be responsible or liable to Buyer or to any third party for any lost profits, or incidental, consequential, indirect, special or contingent damages for any breach or warranty or other breach of Seller's obligations under this contract. Seller shall not be liable for damages relating to any instrument, equipment, or apparatus with which the product sold under this agreement is used.

SELLER'S REMEDIES: If Buyer fails with or without cause to furnish Seller with specifications and/or instructions for, or refuses to accept deliveries of, any of the product sold under this contract, or is otherwise in default under or repudiates this contract or any other contract with the Seller or fails to pay when due any invoice under this contract then in addition to any and all remedies allowed by law, Seller without notice (1) may bill and declare due and payable all undelivered products under this or any other contract between Seller and Buyer and/or (2) may defer shipment under this or any other contract between Buyer and Seller until such default, breach or repudiation is removed and/or (3) may cancel any undeliverable portion of this and/or any other contract in whole or in part (Buyer remaining liable for damages.)

PACKING: All products shall be suitably packed for air shipment, unless otherwise requested by Buyer and agreed to in writing by Seller.

WARRANTY: Seller specifically excludes all express warranties and makes no implied warranty that the Goods sold under this agreement are merchantable or are fit for any particular purpose, except such warranties expressly identified as warranties as are set forth in Seller's current operating manual, catalog or written guarantee covering such product. Seller also makes no warranty that the Goods sold under this agreement are delivered free of the rightful claim of any third party by way of patent infringement or the like. If Buyer furnishes specifications to Seller, Buyer agrees to hold Seller harmless against any claim which arises out of compliance with the specifications. Any description of the Goods contained in this contract is for the sole purpose of identifying them, and any such description is not part of the basis of the bargain, and does not constitute a warranty that the Goods shall conform to that description. Any sample or model used in connection with this contract is for illustrative purposes only not part of the basis of the bargain, and is not to be construed as a warranty that the Goods will conform to the sample or model. No affirmation of fact or promise made by Seller, whether or not in this contract, shall constitute a warranty that the Goods will conform to the affirmation of promise.

MEDICAL &/OR LIFE SUPPORT APPLICATIONS: DataRay's products are not designed for use in, or testing of, medical or life support equipment or any other applications where malfunction can reasonably be expected to result in a personal injury or property damage. DataRay's customers using or selling DataRay's products for such uses do so at their own risk and agree to fully indemnify DataRay for any damages resulting from such use or sale.

ASSIGNMENT: This contract and Buyer's rights thereunder may not be assigned by Buyer except with the prior written approval of Seller.

WAIVER: Waiver by Seller of any provision of this contract or a breach by Buyer of any provision of this contract shall not be deemed a waiver of future compliance with this contract, and such provision, as well as all other provisions, of this contract shall remain in full force and effect.