



**Coherent Aerospace & Defense, Inc.**  
*A wholly owned subsidiary of Coherent Corp.*  
36570 Briggs Road  
Murrieta, CA 92563

## TERMS AND CONDITIONS OF SALE

### 1. LIMITS OF AGREEMENT.

Coherent Aerospace & Defense, Inc. or its Affiliate named on the face of the quote (such entity, "**Coherent A&D**") hereby offers to sell to the buyer identified on the face of the quote ("**Buyer**"), or accepts the Buyer's offer to purchase, any of the products ("**Products**") or services ("**Services**") set forth on the face of the applicable quote solely in accordance with both (a) the terms and conditions contained in these Terms and Conditions of Sale (the "**Sale Terms**"); and (b) the terms and conditions set forth on the face of the quote provided by Coherent A&D to Buyer (the "**Quote Terms**," together with the Sale Terms, the "**Terms**"). As used in the foregoing sentence, "Affiliates" shall mean any direct or indirect subsidiary or other entity which either controls, is controlled by, or is under common control with Coherent A&D, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of Coherent A&D, whether through the ability to exercise voting power or direct operations as otherwise duly authorized by officers, directors or management personnel. Unless otherwise expressly stated in writing, with respect to any conflicts between the Sale Terms and the Quote Terms, the Quote Terms will control. All offers by Coherent A&D to sell the Products or provide Services are expressly limited to the Terms, and the Terms shall take precedence over and void any additional, different, or conflicting terms or conditions presented to and/or accepted by Coherent A&D in any electronic portal utilized by Buyer in connection with this transaction or Buyer's general vendor registration process. If Buyer has ordered Products or Services from Coherent A&D and such order is deemed by Coherent A&D to be an offer by Buyer, Coherent A&D's acceptance of such offer is expressly conditioned on Buyer's agreement to the Terms, to the exclusion of all other terms and conditions. Any additional, different, or conflicting terms or conditions proposed by Buyer in any offer, acceptance, or confirmation, including those set forth on any Buyer purchase order, specifications, or other documents issued by Buyer are considered by Coherent A&D to be requests for material alterations of the Terms, are hereby rejected, and will not be binding in any way on Coherent A&D. Buyer is hereby notified of Coherent A&D's objection to all such additional, different, or conflicting terms and

conditions. No waiver or amendment of any of the Terms will be binding on Coherent A&D unless made in a writing expressly stating that it is such a waiver or amendment and signed by an officer of Coherent A&D. Buyer will have accepted (and will be deemed to have accepted) these Terms if Buyer does any of the following: (a) accepts the Terms in writing, (b) pays (in part or whole) for any Products or Services, or (c) receives delivery of any Products or Services. All Coherent A&D offers are open for acceptance for no longer than the period stated on the face of the quote issued by Coherent A&D, or, when no period is stated, thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by Coherent A&D at any time prior to the receipt by Coherent A&D of Buyer's acceptance of such offer. No person, including any sales representative, order gatherer, or liaison officer for Coherent A&D, is an agent for Coherent A&D or has authority to extend or accept an offer on Coherent A&D's behalf.

### 2. PRODUCTS AND SERVICES PROVIDED AND PRICE.

(a) Unless otherwise specified on the quote provided by Coherent A&D, Products pursuant to the Terms shall be newly manufactured products but may contain components which have been previously used in other product units that meet or exceed Coherent A&D's specifications for newly manufactured components.

(b) The prices for Products and Services are those set forth on the face of the quote provided by Coherent A&D. The cost of packaging for normal domestic shipment is included in the invoiced price for Products.

(c) Prices and orders do not include federal, state, municipal or local excise, sales, use or other taxes or customs duties, if applicable (excluding only taxes based on Coherent A&D's income), which are applicable to the Products and Services. Such tax and duties will be added by Coherent A&D to the sales price when Coherent A&D has the legal obligation to collect the same and Buyer will pay such taxes and duties unless Buyer provides Coherent A&D with a proper tax exemption certificate for each jurisdiction in which taxes otherwise would be due. In the event Coherent A&D is required to pay any such

tax or duty at the time of sale or thereafter, Buyer will promptly reimburse Coherent A&D for the total amount of any such tax or duties.

(d) Unless expressly agreed to in writing and signed by Coherent A&D, prices quoted are for the Products and Services described on the face of the quote by Coherent A&D only and do not include any technical data, proprietary rights of any kind, or patent rights.

(e) These Terms govern the purchase and sale of the Products or Services set forth on the face of the quote, and are exhaustive as to the rights and benefits of both parties hereto. These Terms do not create any obligation by Coherent A&D to provide Products or Services to Buyer except as set forth on the face of the quote. Products or Services which are not set forth on the face of the quote are outside of the scope of this transaction but may be purchased from Coherent A&D at Coherent A&D's sole discretion under a separate negotiated instrument.

(f) If the price of fuel, metals, raw materials, or other production costs increases significantly, Coherent A&D will have the right to impose a reasonable surcharge for all affected Products or Services.

### **3. PAYMENT TERMS.**

(a) Subject to credit approval by Coherent A&D and unless otherwise specified by Coherent A&D on the face of the quote provided by Coherent A&D, all payments are due and payable in full thirty (30) days from the date of invoice. Coherent A&D reserves the right to require alternative payment terms, including, without limitation, sight draft, letter of credit or payment in advance. Coherent A&D may require the disclosure and evaluation of Buyer's financials to extend credit to Buyer. Coherent A&D, at any time and its sole discretion, may change or withdraw Buyer's credit. All payments shall be made to Coherent A&D at the location designated on the face of the invoice provided by Coherent A&D. Interest will accrue on overdue invoices on the unpaid balance from the original due date of the invoice at the rate of one and one-half percent (1½ %) per month, or the highest rate permitted by law, whichever is less. Buyer is not entitled to any refund for payments made under progressive payment terms and may not withhold payment for any delay in installation due to a Buyer request or issue, or any delay in delivery of required documentation.

(b) Notwithstanding the foregoing, all orders are subject to, and the obligation of Coherent A&D to

make deliveries is subject to, the right of Coherent A&D, in its sole discretion, to either (i) require of the Buyer payment for all or any part of the purchase price in advance of delivery; or (i) to make shipment C.O.D. If the Buyer fails to make advance payment when requested by Coherent A&D, or if the Buyer is or becomes delinquent in the payment of any sum due Coherent A&D (whether or not arising out of the same order) or refuses to accept C.O.D. shipment, then Coherent A&D shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, or declare immediately due and payable all unpaid amounts for Products or Services previously delivered to the Buyer.

(c) If Products or Services covered by these Terms are not delivered or performed at one time, Buyer will pay for the quantity of Products delivered or Services performed. Partial shipments made under any order will be treated as separate and independent transactions. However, in the event of any default by Buyer, Coherent A&D may decline to make further shipments without in any way affecting its rights under such order.

(d) To secure any or all of its obligations under these Terms and the applicable quote, Buyer hereby grants and pledges to Coherent A&D a first priority security interest in all of such Buyer's right, title and interest in and to any and all Products or proceeds of the foregoing, whether presently existing or hereinafter acquired. If Buyer defaults under any obligation under these Terms or the applicable quote, Coherent A&D may pursue all remedies of a secured creditor provided under the UCC or other applicable law. Buyer agrees that Coherent A&D may file such financing statements and amendments thereto as Coherent A&D deems necessary to protect its interest in the Products or proceeds thereof and to effectuate the purposes of this section. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement. Upon Coherent A&D's request, Buyer will execute and file any documents to perfect Coherent A&D's security interest and/or mortgage in any Products.

### **4. TRANSPORTATION; TITLE AND RISK OF LOSS, INSURANCE.**

(a) Unless otherwise agreed to in writing by Coherent A&D, all transportation will be at the expense of Buyer. Coherent A&D reserves the right to ship Products freight collect and to select the means of transportation and routing. Unless otherwise advised, Coherent A&D may at its option

insure to the full value of the Products or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs will be for Buyer's account. Buyer agrees to reimburse Coherent A&D for the cost of providing such insurance. If Buyer has not been notified of the existence of insurance coverage and provides its own insurance for such shipment, Coherent A&D will waive its insurance charge. All prices are exclusive of insurance cost. Title and risk of loss or damage to Products will pass to Buyer EXW (Incoterms 2020) upon delivery to the carrier at Coherent A&D's place of manufacture or warehouse location.

(b) Confiscation or destruction of, or damage to Products shall not release, reduce or in any way affect the liability of Buyer for such Products. Notwithstanding any defect or nonconformity, or any other matter, risk of loss will remain with Buyer until the Products are returned at Buyer's expense to such place (or places) as Coherent A&D may designate in writing. Buyer, at its expense, shall fully insure Products against all loss or damage until Coherent A&D has been paid in full therefore, or the Products have been returned, for whatever reason, to Coherent A&D.

(c) Coherent A&D will, at its own expense, with financially sound and reputable insurers, carry the following insurance: (i) commercial general liability in a sum no less than \$1,000,000 for each occurrence; (ii) workers' compensation insurance in compliance with the applicable laws; and (iii) automobile (motor vehicle) insurance with limits of no less than \$1,000,000.

## **5. SHIPMENT.**

Coherent A&D will use commercially reasonable efforts to meet shipment schedules. However, any shipment quote or forecast on an order acknowledgment is Coherent A&D's best estimate of the time required to make shipment and Coherent A&D will not assume liability, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason, including its negligence of any kind. Coherent A&D reserves the right to allocate inventories and current production, reduce quantities to be delivered or Services to be performed, delay shipments, or allocate such Products or Services among customers in Coherent A&D's sole discretion in any way it deems necessary. Should Coherent A&D be unable to deliver Products or perform Services when estimated, Coherent A&D will not be liable for failure to deliver or perform by such estimated dates unless expressly

agreed to by Coherent A&D in writing. Buyer may not cancel, push-out, or reschedule any purchase order placed with Coherent A&D, except with Coherent A&D's written consent. Coherent A&D shall not be responsible for any delay in shipment or delivery attributable to Buyer providing incomplete or inaccurate shipping information.

## **6. INSPECTION AND ACCEPTANCE.**

The Buyer will have the right to inspect Products within five (5) days of tender of delivery, however, such right to inspect does not impair or impact the transfer of title as set forth in Section 4. Products will be deemed accepted upon tender of delivery as set forth in Section 4. Any errors, alleged defect or nonconformity discovered by Buyer in its inspection of Products shall be resolved in accordance with Section 8. Services will be deemed accepted by Buyer upon being rendered.

## **7. TERMINATIONS.**

Unless otherwise agreed by Coherent A&D or as set forth in the quote provided by Coherent A&D, any order for a Product that has been accepted by Coherent A&D and terminated by Buyer at least sixty (60) days prior to the scheduled shipment date, shall be subject to a termination charge of not less than ten percent (10%) plus any additional costs of processing and order handling not covered by the termination charge; provided, however that, Buyer may not terminate any order without prior written agreement by Coherent A&D and, in the absence of such prior written agreement, Coherent A&D may require Buyer to pay a termination charge determined by Coherent A&D in its sole discretion of not less than twenty-five percent (25%) of the order value. No order may be terminated within sixty (60) days of the scheduled shipment date except by prior written agreement by Coherent A&D. Terminations by mutual agreement for Products or Services are subject to the following conditions:

(i) Buyer will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Buyer at the time of Coherent A&D's receipt of notice of termination;

(ii) Buyer will pay all costs, direct and indirect, which have been incurred by Coherent A&D with regard to Products which have not been completely manufactured at the time of Coherent A&D's receipt of notice of termination, plus a pro rata portion of the normal profit on the contract;

(iii) Buyer will pay a termination charge on all other Products affected by the termination. Coherent A&D's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, Coherent A&D will use commercially reasonable efforts to divert completed parts, material or work-in-progress from terminated contracts to other customers whenever, in Coherent A&D's sole discretion, it is practicable to do so. In the event of a termination, Buyer will have no rights in partially completed Product. Buyer may not reschedule the delivery date for any Products or Services without the prior written agreement of Coherent A&D.

All payments made pursuant to progressive payment terms are nonrefundable. Notwithstanding anything to the contrary in this Section and regardless of mutual agreement or timing of termination, Buyer is not entitled to any refund or credit for payments made prior to termination pursuant to progressive payment terms.

## **8. LIMITED WARRANTY—LIMITATION OF REMEDIES.**

(a) Coherent A&D warrants to Buyer that the Products delivered under the Terms will (i) comply with either the applicable Coherent A&D published specifications for the Products, or the specifications mutually agreed and confirmed in writing between Coherent A&D and Buyer for twelve (12) months from the date of shipment or as otherwise mutually agreed and confirmed on Coherent A&D's quotation, and (ii) will be free from defects in material and workmanship under proper use, service and condition during the defined warranty period. If the Products include any service parts provided by Coherent A&D pursuant to a service event, the warranty period for such service parts shall be ninety (90) days from the date of shipment or the remainder of the initial warranty period, whichever is shorter, unless otherwise expressly specified by Coherent A&D on the face of Coherent A&D's quote. Products or parts which are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific Product. Coherent A&D represents to Buyer that it will provide any Services consistent with general industry standards. To the maximum extent permitted by and subject to applicable law, but notwithstanding anything to the contrary in the Terms, all (x) Products, delivered as "samples", "design verification units", and/or "prototypes", and (y) Licensed Software (as defined below) are provided or sold "AS IS," "WITH ALL FAULTS," and with no warranty whatsoever.

(b) This warranty is the only warranty made by Coherent A&D with respect to the Products and Services. No representative or person is authorized to bind Coherent A&D for any warranty, obligation or liability, express or implied. This warranty provided in this Section 8 is made to the Buyer only at the original delivery location and is nontransferable, and may only be modified or amended by a written instrument signed by a duly authorized officer of Coherent A&D. Major sub-systems manufactured by other firms but integrated into Coherent A&D's system may be covered by the original manufacturer's warranty and Coherent A&D makes no warranty, express or implied regarding such sub-systems.

(c) No Product may be returned to Coherent A&D without first obtaining Coherent A&D's prior written consent and issuance of a Returned Material Authorization form. If, and subject to the limitations of this Section 8 during an applicable warranty period, defective Products are returned to Coherent A&D, DDP (Coherent A&D's dock at either (i) the location where manufactured, or ii) the Coherent A&D designated repair location (Incoterms 2020), transportation costs prepaid and borne by Buyer accompanied by Coherent A&D's Returned Material Authorization form, Coherent A&D will, at its sole option, either repair or replace such products. Buyer will return products in a clean, well-packaged condition. No credit allowance on Products will be made and no replacement for Products will be shipped, unless the Products are established to Coherent A&D's satisfaction, after suitable testing and inspection by Coherent A&D, to be defective. Prior to any return of Products by Buyer pursuant to these Terms, Buyer will afford Coherent A&D the opportunity to inspect such Products at Buyer's location. The risk of loss of the goods shipped or delivered to Coherent A&D's plant or repair location for repair or replacement will be borne by Buyer.

(d) The remedies in this Section 8 are available only if Coherent A&D is notified in writing by Buyer promptly upon discovery that a Product does not conform to this warranty, including a detailed description of such nonconformance, and Buyer provides Coherent A&D the purchase order number(s), approximate date shipped, and any and all other identifying numbers (such as invoice number, date of invoice, etc.) within the warranty period for the individual Product, and Coherent A&D's examination of such Products discloses to Coherent A&D's satisfaction that such Products do not conform to this warranty and the Products have not been (i) repaired, worked on, or altered by persons not authorized by Coherent A&D so as, in Coherent

A&D's sole judgment, to injure the stability, reliability, or proper operation of such Products, (ii) subject to misuse, negligence or accident, or (iii) connected, installed, used or adjusted otherwise than in accordance with the instructions furnished by Coherent A&D.

(e) If it is found that any Product has been returned without cause and is still serviceable, Buyer will be notified and the Product will be returned at Buyer's expense. A charge for testing and examination may, in Coherent A&D's sole discretion, be made on Products so returned.

(f) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY REMEDY IN SECTION 8 CONSTITUTES COHERENT A&D'S EXCLUSIVE LIABILITY AND OBLIGATION, AND BUYER'S EXCLUSIVE REMEDY FOR ANY PRODUCTS OR SERVICES COVERED BY THESE TERMS, INCLUDING ANY BREACH OF ANY WARRANTY OR OTHER DEFECT OR NONCONFORMITY OF THE PRODUCTS OR SERVICES COVERED BY THESE TERMS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES. COHERENT A&D MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE.

(g) OTHER THAN AS PROVIDED WITH RESPECT TO COHERENT A&D'S EXPRESS WARRANTY OBLIGATIONS IN THESE TERMS, COHERENT A&D IS NOT LIABLE FOR ANY COSTS ASSOCIATED WITH THE REPLACEMENT OR REPAIR OF ANY PRODUCT, INCLUDING LABOR, INSTALLATION, OR OTHER COSTS INCURRED BY BUYER AND, IN PARTICULAR, ANY COSTS RELATING TO THE REMOVAL OR REPLACEMENT OF ANY PRODUCT. UNDER NO CIRCUMSTANCES SHALL COHERENT A&D HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES.

## **9. COHERENT A&D'S RIGHTS TO SUBCONTRACT.**

Coherent A&D may subcontract any portion of the manufacture of Product, delivery of Service provided, or other work in accordance with these Terms as well

as any of Coherent A&D's obligations and rights under these Terms.

## **10. BANKRUPTCY OR INSOLVENCY OF BUYER.**

If the financial condition of the Buyer at any time is such as to give Coherent A&D, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations under these Terms, Coherent A&D may: (i) by notice in writing to Buyer, terminate or cancel these Terms, without any requirement of judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Coherent A&D, and (ii) require full or partial payment in advance and suspend any further deliveries for continuance of the work to be performed by Coherent A&D until such payment has been received.

## **11. INDEMNITY.**

(a) Coherent A&D will, at its own expense, defend or settle any suit that may be instituted by a third party against Buyer to the extent based on a claim that the Product in the form provided by Coherent A&D to Buyer under these Terms, infringes such third party's United States patent (excluding processes or methods claimed by such patent), trademark, or copyright if: (i) such alleged infringement is not based on an Excluded Claim (as defined in Section 11(b)), (ii) Buyer gives Coherent A&D immediate notice in writing of any such suit, (iii) Buyer gives Coherent A&D sole control over the defense and settlement of such suit, and (iv) Buyer gives Coherent A&D all needed information, assistance and authority, at Coherent A&D's expense, to enable Coherent A&D to defend or settle such suit. In the case of a final award of damages in any such suit, Coherent A&D will pay such award, but will not be liable for any settlement made without its prior written consent or legal fees incurred by Buyer in connection with any such settlement. In satisfaction of this Section 11(a), Coherent A&D, at its sole discretion, may (x) replace or modify the allegedly infringing products with non-infringing products that are functionally equivalent, (y) obtain a license for Buyer to continue to use or sell the allegedly infringing Products, or (z) accept the return of allegedly infringing products and refund the amount paid by the Buyer for such returned Products.

(b) Coherent A&D will have no liability for, and the obligations of Coherent A&D under Section 11(a) will not apply to any claim arising from or related to (i) the use of Products as a part of or in combination with any other devices, parts, processes or methods, (ii)

Coherent A&D's compliance with any designs, specifications, or instructions provided by or for Buyer, (iii) the use of Products contrary to any instructions issued by Coherent A&D or in breach of these Terms, (iv) modifications or alterations to the Products, (v) the practice of any process or method relating to Buyer's or its customers' use of the Products, or (vi) use of the Products after receiving notice of such third party claim or by Coherent A&D (collectively, "**Excluded Claims**").

(c) THIS SECTION 11 STATES COHERENT A&D'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY ANY PRODUCTS OR SERVICES DELIVERED UNDER THESE TERMS, OR ANY PART THEREOF. THIS SECTION 11 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT WILL COHERENT A&D BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

(d) Buyer will, at its own expense, indemnify and hold Coherent A&D harmless from and against any liabilities, costs, damages, or losses resulting from any Excluded Claim, and will defend or settle at its own expense, including attorney's fees and costs, any suit brought against Coherent A&D based on allegation arising from any Excluded Claim, provided that Coherent A&D, (i) gives Buyer immediate notice in writing of any such suit, (ii) gives Buyer sole control over the defense or settlement of such suit, and (iii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend or settle such suit.

## **12. NO PROPRIETARY RIGHTS.**

(a) Coherent A&D certifies that it owns or holds a license to all intellectual property rights relating to the Products and Services. Coherent A&D retains all rights in and to specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other intellectual and proprietary rights relating to the Products and Services. Sale of any Products by Coherent A&D does not confer upon Buyer a license under any patents, trade secrets, trademarks or copyrights to

combine any product furnished under these Terms with any other product or to modify any Product furnished under these Terms.

(b) The design, development or production of Products and provision of Services under these Terms will not be deemed to be a "work made for hire" or "commissioned work" and Coherent A&D retains for itself all intellectual property and proprietary rights in and to all designs, engineering details, and other data and materials pertaining to any Products or Services supplied by Coherent A&D and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Coherent A&D in connection with the Products or Services or with any and all products developed by Coherent A&D as a result thereof, including the sole right to manufacture any and all such products and Buyer covenants and warrants it will not manufacture or engage to have manufactured such products. All documentation and other data generated by Coherent A&D in the performance hereunder will remain the sole and exclusive property of Coherent A&D. Any designs, processes or methods that are developed by Coherent A&D concurrently with the work performed under these Terms will be the sole and exclusive property of Coherent A&D, and Coherent A&D reserves the right to use such designs processes or methods for other customers, or license their use to others. Coherent A&D will retain title to and possession of all tooling, material or equipment of any kind used in the manufacture, testing, or assembly of Products furnished under these Terms.

(c) Coherent A&D may, from time to time, solicit or accept suggestions, comments, or feedback (collectively "**Feedback**") from Buyer regarding the Products or Services sold hereunder. Buyer hereby acknowledges and agrees that Coherent A&D may use any such Feedback for any purpose without owing compensation or any other obligation to Buyer. Coherent A&D shall be (and Buyer hereby acknowledges and agrees that Coherent A&D is) the sole and exclusive owner of any and all changes, improvements, or enhancements to (or relating to) the Products and Services, and any new or alternative products, services, designs, specifications, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other related intellectual and proprietary rights, regardless of whether or to what extent any such Feedback contributed to the creation thereof.

## **13. CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION.**

(a) All information provided by Coherent A&D to Buyer shall be deemed confidential information. All such confidential information of Coherent A&D will be treated as confidential pursuant to the terms of the applicable nondisclosure agreement, if any, between Coherent A&D and Buyer. If there is no non-disclosure agreement in place, all information that Buyer knows, or should know, is confidential to Coherent A&D, will remain the property of Coherent A&D and may be used, reproduced and disclosed by Buyer only to the extent necessary to use the applicable Products and Services purchased under and in accordance with these Terms and not used, reproduced, or disclosed for any other purpose. Buyer may not announce, describe, or otherwise confirm the existence of the transaction contemplated by these Terms or use the name, logo, trademark, or other symbol of Coherent A&D in publicity releases or advertising without securing the prior written consent of Coherent A&D.

(b) In connection with the transaction contemplated by these Terms, either party may disclose to the other certain information that identifies, relates to, describes, or is reasonably capable of being associated, or reasonably linked or linkable to a particular individual or device ("**Personal Information**"). The parties acknowledge and agree that such information is highly confidential and private in nature (especially with respect to information such as phone numbers and addresses, credit card information, Social Security numbers, or employee and/or customer account information) and agrees to protect such information in accordance with all applicable privacy, data protection, and security laws and regulations. Each party agrees that it will not use such information for any secondary business or commercial purposes beyond the purposes of performing its obligations hereunder, such as without limitation marketing, selling, or sharing such information.

#### 14. SOFTWARE.

Unless otherwise agreed to in a separate signed software license agreement between Coherent A&D and Buyer, the following terms and conditions will apply to software and firmware in all forms, including any documentation provided by Coherent A&D under these Terms ("**Licensed Software**"):

(i) Coherent A&D retains full rights, title, and ownership including all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the Licensed Software;

(ii) For standalone Licensed Software, subject to and conditioned on these Terms, Coherent A&D grants to Buyer a non-exclusive, nontransferable, non-sublicensable, limited license to internally use the Licensed Software as a development platform solely in connection with Coherent A&D products;

(iii) For Licensed Software embedded in Coherent A&D products, subject to and conditioned on these Terms, Coherent A&D grants to Buyer a non-exclusive, limited license to use and distribute the Licensed Software (in machine code only) solely as incorporated in Coherent A&D products;

(iv) Subject to mandatory applicable law, Buyer agrees not to engage in, and to take all reasonable steps to prevent, unauthorized use and disclosure of, including without limitation any effort to reverse engineer, disassemble, de-compile, modify, or otherwise attempt to derive the source code of any Licensed Software or any portion thereof; and

(v) Buyer will not remove or destroy any trademark, copyright markings, legends, or notices placed upon or contained within the Licensed Software.

#### 15. EQUAL OPPORTUNITY.

Coherent A&D certifies that it has developed and has on file affirmative action programs as required by the rules and regulations of Executive Order 11246, as amended and 41 C.F.R. Chapter 60, issued by the Department of Labor. In addition, Coherent A&D is in full compliance with section 503 of the Rehabilitation Act of 1973 and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974.

#### 16. APPLICABLE LAW; JURISDICTION AND VENUE.

The validity, performance and construction of these Terms, and any disputes arising from or relating thereto, will be governed by the laws of the State of California without reference to its conflict of laws principles. The state and federal courts in the State of California will have exclusive jurisdiction and venue over any dispute arising out of any claim, dispute, or controversy among the parties arising out of or relating to these Terms, including the breach of these Terms, and Buyer hereby consents to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) shall not apply.

#### 17. LIMITATION OF LIABILITY.

(a) Coherent A&D will not be liable for any loss, damages or penalty resulting from delay in delivery of the products or performance of services when such delay is due to causes beyond the reasonable control of Coherent A&D, including without limitation, supplier delay, force majeure, act of God, labor unrest, fire, explosion, earthquake, acts of civil or military authority, pandemics, epidemics, floods, riots, wars, terrorism, sabotage, labor disputes, yield problems, governmental actions, or inability to obtain materials, components, energy, manufacturing services or facilities, or transportation on commercially reasonable terms. In any such event, Coherent A&D will utilize commercially reasonable efforts to notify Buyer of the delay, and the delivery date or date of performance will be deemed extended for a period equal to the delay or other longer reasonable time.

(b) COHERENT A&D'S LIABILITY UNDER, FOR BREACH OF, OR ARISING OUT OF THE TERMS AND/OR SALE WILL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCTS (OR REPERFORMANCE OF THE SERVICES) OR A REFUND OF THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES, AT COHERENT A&D'S SOLE OPTION, AS SET FORTH IN SECTION 8 ABOVE.

(c) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, IN NO EVENT WILL COHERENT A&D BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTED PRODUCTS OR SERVICES, NOR WILL COHERENT A&D BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES OR FOR LOST PROFITS OR LOSS OF BUSINESS WHETHER OR NOT COHERENT A&D HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS HOWEVER CAUSED, UNDER ANY LEGAL THEORY WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF COHERENT A&D ARISING OUT OF OR RELATED TO THE TERMS AND/OR SALE, EVEN IF COHERENT A&D IS APPRISED OF OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, IN NO EVENT WILL COHERENT A&D'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER (INCLUDING BUT

NOT LIMITED TO ANY WARRANTY OR INDEMNITY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO COHERENT A&D HEREUNDER FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION). THIS LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS TO BUYER FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. NO CLAIM, SUIT OR ACTION WILL BE BROUGHT AGAINST COHERENT A&D MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS TRANSPIRED.

(e) BUYER ACKNOWLEDGES THAT COHERENT A&D HAS SET ITS PRICES AND FEES AND AGREED TO SELL PRODUCTS AND SERVICES TO BUYER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY, DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES AND EXCLUSIVE REMEDIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH COHERENT A&D WOULD NOT HAVE AGREED TO SELL PRODUCTS AND SERVICES TO BUYER. BUYER AGREES THAT SUCH PROVISIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

(f) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, COHERENT A&D WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR EXCESS COSTS OF REPROCUREMENT.

#### **18. BREACH.**

Any one of the following acts by Buyer will constitute a material breach of Buyer's obligations under these Terms: (i) Buyer fails to make payment for any Products or Services in full when due, (ii) Buyer fails to accept conforming Products or Services supplied under these Terms, or (iii) the filing of either a voluntary or involuntary petition in bankruptcy with respect to Buyer, Buyer's insolvency or inability, or admission in writing of its inability, to pay its debts generally as they become due, Buyer's application for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of a substantial part

of its property, Buyer's initiation of an out of court restructuring or wind down, or Buyer's dissolution or liquidation in full or in part or an assignment for the benefit of creditors of Buyer. In the event of Buyer's material breach, Coherent A&D may (in addition to any other rights or remedies provided herein or at law or in equity), by written notice to Buyer, terminate its obligations or any part thereof, without incurring any liability; provided, however, that with respect to a material breach due to subsection (iii) above, such termination shall be automatic and effective without notice to Buyer. Buyer will pay all costs, including reasonable attorney's fees, incurred by Coherent A&D in any action brought by Coherent A&D to collect payments owing or otherwise enforce its rights.

## **19. SUBSTITUTIONS, MODIFICATIONS, AND CHANGES.**

Coherent A&D will have the right to make substitutions and modifications to the specifications of Products or Services sold by Coherent A&D if such substitutions or modifications will not materially degrade overall performance. Coherent A&D will also have the right to make changes or modifications to its manufacturing, testing, inspection, production, quality, and business processes at any time or for any reason, provided that such changes do not materially increase the instances where Products or Services sold by Coherent A&D fail to conform with applicable specifications.

## **20. SAFETY-CRITICAL AND MILITARY APPLICATIONS.**

(a) Unless expressly specified by Coherent A&D in writing in the specifications for the applicable Product, Products are not designed for and will not be used in connection with any applications where the failure of such Products would reasonably be expected to cause significant personal injury or death ("**Safety-Critical Applications**") without the specific written consent of an officer of Coherent A&D. Safety-Critical Applications include, without limitation, life support devices and systems, equipment or systems for the operation of nuclear facilities and weapons systems. Buyer will fully defend (at Coherent A&D's option), indemnify and hold Coherent A&D harmless from and against any cost, loss, liability, or expense arising out of or related to use of Coherent A&D Products in Safety-Critical Applications.

(b) Unless expressly specified by Coherent A&D in writing that applicable Products meet military specifications or standards (MIL-SPEC or MIL-STD), Products are neither designed nor intended for use in

military or aerospace applications or environments. Buyer acknowledges and agrees that any such use of Coherent A&D Products which has not been designated as meeting military specifications is solely at Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

## **21. COMPLIANCE WITH LAWS, GENERAL PROVISIONS.**

(a) Coherent A&D represents that it complies with all applicable laws and regulations governing the activities contemplated by these Terms, including (i) labor laws, (ii) laws, regulations and requirements regarding the environment and the export, import or re-export of Products, (iii) laws, regulations and requirements regarding anticorruption and bribery, and (iv) data security, privacy and data protection laws and regulations.

(b) Buyer agrees that it will comply with all applicable laws, regulations, and administrative rules, including in connection with any transfer, resale, or integration and resale of the Products (collectively, "**Reselling Actions**"). Buyer acknowledges that it is solely responsible for compliance with all applicable laws, regulations, and administrative rules in connection with any Reselling Activities. Coherent A&D may cancel or terminate any order immediately without further liability if Buyer is in violation of any applicable laws, regulations, or administrative rules. Buyer will provide any additional documentation required by Coherent A&D for compliance with applicable laws, regulations, or administrative rules.

(c) Buyer represents itself to be knowledgeable as to United States and other relevant laws, regulations and requirements regarding the environment and the export, import or re-export of Products, whether tangible or intangible, from the United States of America or elsewhere, and agrees to conduct its activities in accordance with all United States and other environmental regulations and any similar or other rules, and import and export regulations (collectively, "**Export Laws**"). Buyer further represents itself to be knowledgeable as to United States and other relevant laws, regulations and requirements regarding anticorruption and bribery, and agrees to conduct its activities (including any Reselling Activities) in accordance with all applicable anticorruption laws including, without limitation, the United States Foreign Corrupt Practices Act, regulations of the United States Departments of Commerce, Defense, State and Treasury, the United Kingdom Bribery Act of 2010, anti-corruption Laws in

Germany, the European Union, and other laws and regulations of the United States and any other applicable government or jurisdiction (collectively, "**Anticorruption Laws**").

(d) Buyer will, at its own expense, pay all fines, penalties, and/or sanctions to the extent that they relate to any breach of Export Laws or Anticorruption Laws by Buyer in connection with any Reselling Activities. Buyer acknowledges and agrees that it shall be solely liable for compliance with all Export Laws and Anticorruption Laws in connection with any Reselling Activities.

(e) Buyer may not assign any of its rights or delegate any of its obligations under these Terms, whether voluntarily, by operation of law, or otherwise without Coherent A&D's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. In addition, Buyer may not assign any of its rights or delegate any of its obligations to any entity controlled by, controlling or under common control with Buyer or in connection with Buyer's merger or the transfer or sale of all or substantially all of Buyer's assets or stock without Coherent A&D's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. Coherent A&D may assign its rights and/or delegate its obligations under these Terms upon written notice to Buyer. Subject to the foregoing, these Terms will bind each party and its respective successors and permitted assigns.

(f) Any waiver by Coherent A&D of any right it may have or default by Buyer will not be deemed to be a continuing waiver of such right or default or a waiver of any other right it may have under these Terms or other default, nor will any delay or omission by Coherent A&D in exercising or availing itself of any right or remedy that it has or may have operate as a waiver of any right or remedy. No waiver by Coherent A&D will be effective except pursuant to a writing signed by a duly authorized representative of Coherent A&D.

(g) These Terms may not be superseded, cancelled, modified, or amended except in a writing stating that it is such a modification and signed by an officer of each party. No other act, document, usage, or custom will be deemed to supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid, illegal, or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain

in full force and effect.

(h) These Terms, which include the documents incorporated by reference on the face of the quote provided by Coherent A&D (but expressly does not include any of the terms and conditions of Buyer's purchase order, specifications or any similar document issued by Buyer) will constitute the entire agreement between Buyer and Coherent A&D with regard to the Products or Services sold under these Terms, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such Products or Services.