

Terms and Conditions

ACCEPTANCE. Except as otherwise agreed in a written agreement signed by both parties, these Terms and Conditions will govern Buyer's purchase order. BI Technologies' acceptance of Buyer's purchase order is expressly conditioned upon Buyer's agreement that these Terms and Conditions shall be the sole and exclusive terms and conditions applicable to Buyer's purchase of products. BI Technologies specifically rejects, and Buyer disclaims, all terms and conditions in Buyer's purchase order or otherwise proposed by BI Technologies if such terms and conditions are additional to, different from or inconsistent with these Terms and Conditions. Any performance by BI Technologies pursuant to Buyer's purchase order, including, without limitation, manufacture or shipment of products, shall be deemed to be an acceptance solely upon these Terms and Conditions.

PRICES

The prices set forth on the attached quote or sales order (i) are BI Technologies' domestic prices based upon manufacture of the quantity and type ordered for shipment and end use within the United States and Canada only. All products shipped for end use outside of the United States shall be subject to BI Technologies' international prices, (ii) are subject to revision when interruption, engineering changes or changes in quantity or quality are caused or requested by Buyer, and (iii) do not include warranty service or installation outside the United States and Canada. Clerical errors made by BI Technologies are subject to correction.

SPECIFICATIONS

Weights and dimensions set forth in sales literature are not guaranteed unless previously certified in writing. BI Technologies may, without affecting the obligations under the sales order, make insignificant changes to the specifications of the product or products delivered under this sales order from those contained in sales literature.

TERMS OF PAYMENT

Terms of payment on this quote or sales order are net thirty (30) days from date of the invoice unless otherwise specifically stated on the face hereof. Invoices are payable at par on date due at any place of collection designated by BI Technologies in funds bankable at par. All orders are accepted subject to, and the obligation of BI Technologies to make deliveries is subject to, the right in BI Technologies to require of Buyer payment of all or any part of the purchase price in advance of delivery. If Buyer fails to make advance payment when requested to do so by BI Technologies or if Buyer is or becomes delinquent in the payment of any sum due BI Technologies (whether or not arising out of this sales order), then BI Technologies shall have the right in addition to any other remedy to which it may be entitled in law or in equity, to cancel this sales order, refuse to make further deliveries, and declare immediately due and payable all unpaid amounts for goods previously delivered to Buyer. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly.

SHIPMENTS

All shipments, unless otherwise specifically provided, shall be f.o.b. point of shipment, and title to and risk of loss for all products shall pass to Buyer upon BI Technologies' delivery of the products to the carrier. The cost of packaging for domestic shipment is included in the quoted price. Where special packaging is specified involving greater expense, a charge will be made to cover such extra expense. All shipments shall be insured, unless specific request is made by Buyer to the contrary and this insurance expense shall be paid by Buyer. All claims for damage or loss of insured shipments should be communicated immediately to BI Technologies for adjustment. Claims as to uninsured shipments should be made to the carrier, but BI Technologies will render all possible assistance in securing satisfactory adjustments of such claims.

Shipments shall be made in the manner and by the carrier requested by Buyer, but where questions arise concerning suitability of carriers for handling specific products the decision of BI Technologies must be accepted.

INSPECTION AND ACCEPTANCE

All products purchased by Buyer shall be deemed inspected and accepted within 14 business days after receipt of shipment by Buyer. Within such 14-day period, Buyer must give written notice to BI Technologies of any claim based on the condition, quality, grade or amount of the products, or of any claimed nonconformities with specifications of the purchase order, indicating the basis of the claim in detail. Failure of Buyer to timely comply with this notice requirement shall constitute irrevocable acceptance of the products and shall bind Buyer to pay the full invoice price of the products. If the purchase order involves partial performances, any claim shall be asserted within such 14-day period following each partial performance.

RETURNS

There shall be no cancellation, revocation of acceptance or return of products except for defects in product material and workmanship. Buyer shall obtain BI Technologies' express written consent to return products and BI Technologies shall have the right prior to return to inspect at Buyer's plant any products claimed to be defective or nonconforming. Buyer shall pack, insure for shipment and immediately return such products in as good condition as when received by Buyer. Shipping charges for returned products will be paid by BI Technologies only for products repaired or replaced or for which the purchase price is refunded pursuant to warranty. Risk of loss or damage to any products returned to BI Technologies for adjustment shall remain with Buyer until they are received by BI Technologies.

TERMINATIONS

Buyer may cancel the remaining unfilled portion of its order only upon BI Technologies' express written consent and Buyer's payment to BI Technologies of reasonable cancellation charges which may include the profit to be made on the cancelled portion of the order and shall take into account the products already produced or in process, the expenses already incurred and the commitments already made as a consequence of the order. Any cancellation of a purchase order for custom products manufactured solely for Buyer shall be subject to a cancellation charge equal to the cost incurred by BI Technologies for all materials, work-in-progress and finished goods, or 10% of the total purchase order value, whichever is greater. In no event will the cancellation charges exceed the purchase price of the cancelled products.

DELIVERY

The scheduled shipping or delivery date shown on the face hereof is our best estimate of the time the order will be shipped and BI Technologies assumes no liability for loss, general damages, or special or consequential damages due to delays.

TAXES

Federal, state or local excise, sales or use taxes shall be paid by Buyer.

INDEMNIFICATION

Buyer shall indemnify and hold harmless BI Technologies, its officers, agents and employees against all expense, loss, attorneys fees, costs, damage or liability arising from any claim or action for defective products where the alleged defect relates to design, labeling or manufacture specifications supplied by Buyer. At the request of BI Technologies, Buyer shall defend at its own expense all such claims or actions, provided that BI Technologies shall be entitled, at its election, to participate in such defense.

INFRINGEMENT

Buyer shall indemnify, defend and hold harmless BI Technologies, its officers, agents and employees against any expense, loss, attorney's fees, costs, damage or liability arising out of all claims or actions for infringement of patents or copyrights, misappropriation of trade secrets or wrongful use of designs, trademarks or trade names based on product designs or specifications supplied by Buyer.

WARRANTY

Subject to the exceptions and upon the conditions stated below. BI Technologies warrants that the products sold under this sales order shall be free from defects in workmanship and materials for one year after delivery of the products to the original Buyer by BI Technologies, and if any such product should prove to be defective within such one year period, BI Technologies agrees at its option, either (i) to correct by repair or, at BI Technologies' election, by replacement with equivalent product any such defective product, provided that investigation and factory inspection discloses that such defect developed under normal and proper use, or (ii) to refund the purchase price. The exceptions and conditions mentioned above are as follows.

(a) components or accessories manufactured by BI Technologies which by their nature are not intended to and will not function for one year are warranted only to give reasonable time; what constitutes reasonable time and reasonable service shall be determined solely by BI Technologies. A complete list of such components and accessories is maintained at the factory;

(b) BI Technologies makes no warranty with respect to components or accessories not manufactured by it; in the event of defect of any such component or accessory, BI Technologies will give reasonable assistance to Buyer in obtaining from the respective manufacturer whatever adjustment is authorized by the manufacturer's own warranty;

(c) any product claimed to be defective must, if required by BI Technologies, be returned to the factory, transportation charges prepaid, and will be returned to Buyer with transportation charges collect unless the product is found to be defective, in which case BI Technologies will pay all transportation charges.

(d) if the product is a reagent or the like, it is warranted only to conform to the quantity and content and for the period (but not in excess of one year) stated on the label at the time of delivery;

(e) BI Technologies may from time to time provide a special printed warranty with respect to a certain product, and where applicable, such warranty shall be deemed incorporated herein by reference;

(f) BI TECHNOLOGIES SHALL BE RELEASED FROM ALL OBLIGATIONS UNDER ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, IF ANY PRODUCT COVERED HEREBY IS REPAIRED OR MODIFIED BY PERSONS OTHER THAN ITS OWN AUTHORIZED SERVICE PERSONNEL, UNLESS SUCH REPAIR BY OTHERS IS MADE WITH THE WRITTEN CONSENT OF BI TECHNOLOGIES.

IT IS EXPRESSLY AGREED THAT THE ABOVE WARRANTY SHALL BE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, OR OTHERWISE, AND THAT THE SOLE AND EXCLUSIVE REMEDIES OF BUYER OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIM AGAINST BI TECHNOLOGIES FOR BREACH OF WARRANTY OR IN RESPECT OF ANY CLAIM AGAINST BI TECHNOLOGIES, WHETHER BASED UPON CONTRACT, TORT, STRICT LIABILITY OR NEGLIGENCE SHALL BE, AT BI TECHNOLOGIES' OPTION, TO REPAIR OR REPLACE SUCH PRODUCT OR TO REFUND THE PURCHASE PRICE.

IN NO EVENT SHALL BI TECHNOLOGIES HAVE LIABILITY FOR SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR FROM ANY CAUSE WHATSOEVER ARISING OUT OF THE MANUFACTURE, USE, SALE, HANDLING, REPAIR, MAINTENANCE OR REPLACEMENT OF ANY OF THE PRODUCTS SOLD UNDER THIS SALES ORDER.

Representations and warranties made by any person, including dealers and representatives of BI Technologies, which are inconsistent or in conflict with the terms

of this warranty, shall not be binding upon BI Technologies, unless reduced to writing and approved by an expressly authorized officer of BI Technologies.

BI Technologies makes no warranty that Custom Designed Products employing Buyer's circuit design will be free from defects in design except to the extent specifically stated in a BI Technologies quotation or a sales order or contract.

CONFIDENTIAL INFORMATION

BI Technologies and Buyer shall each receive and maintain in confidence all proprietary information, trade secrets or other know-how belonging to the other (including but not limited to knowledge of manufacturing or technical processes, financial and systems data and customer lists), (the "Confidential Information") provided that any such Confidential Information is not previously known to the recipient, is not generally available in the industry in which the disclosing party is engaged or enters into the public domain without the act of the party obligated to maintain such confidentiality hereunder. Either party may disclose Confidential Information to the extent that such disclosure is required by any law or governmental regulation, subpoena or the decree of a court having competent jurisdiction, provided that the party required to disclose shall notify the other in writing as soon as practical in order to afford such party the best opportunity to defend against disclosure and shall only disclose such information as its legal advisers shall state is necessary. In the event of a breach by Buyer of any provision hereof regarding the disclosure of Confidential Information, BI Technologies shall be entitled to immediate and permanent injunctive relief, it being agreed that the damages that BI Technologies would sustain upon such violation are difficult or impossible to ascertain in advance. Nothing herein contained shall be construed as prohibiting BI Technologies from pursuing any other remedies available to it for any such breach or threatened breach, including the recovery of monetary damages. The posting of a bond shall not be required as a pre-condition to such injunctive relief.

CONTINGENCIES

BI Technologies shall be entitled to cancel or rescind this sales order without liability for loss or damage resulting therefrom if any product covered by this sales order is purchased for end use outside the United States or Canada or if the performance of its obligations under this sales order is in any way adversely affected by the occurrence of any contingency beyond the control either of BI Technologies or BI Technologies' suppliers, including but not limited to war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms of this sales order otherwise, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or technical or yield failure where BI Technologies has exercised ordinary care in the prevention thereof.

TOOLING

Unless otherwise agreed, any special tooling and other equipment necessary to manufacture the products shall remain the property of BI Technologies. BI Technologies may charge Buyer for the cost of maintenance and rework of any tools and equipment owned and provided by Buyer.

COMPLIANCE WITH LAWS

Buyer warrants and certifies that it has complied, and will comply, with all applicable governmental, statutory and regulatory requirements and will furnish BI Technologies with such proof of compliance as may be required hereunder. Buyer will not make any disposition, by way of trans-shipment, re-export, diversion or otherwise, except as such laws and regulations may expressly permit, of U.S. origin goods purchased from BI Technologies, other than in and to the ultimate country of destination specified on Buyer's purchase order and/or declared as the country of ultimate destination on BI Technologies' invoices.

ASSIGNMENT

Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of BI Technologies any purported assignment by Buyer without such consent shall be null and void.

WAIVER

Failure by BI Technologies to insist upon strict performance of any provision hereof by Buyer shall not be deemed to be a waiver by BI Technologies of its rights or remedies or a waiver by it of any subsequent default by Buyer.

SEVERABILITY

In the event that one or more provisions hereof should be held to be unenforceable in any respect this document shall be construed as if such unenforceable provision(s) had not been contained herein.

CHOICE OF LAW

This sales order is made and entered into and shall be governed by the laws of the State of California, without regard to the conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is excluded and shall not apply.

BI Technologies Corporation

