

## Terms and Conditions of Sale

### 1. Definitions

In these conditions the following words have the following meanings unless the context requires otherwise.

**"Acceptance"** the express act by the Customer to accept the Products and/or Services delivered by Company, at which point title and risk passes to the Customer.

**"Brochure"** means any brochure published by Company advertising and detailing the Products and/or the services provided by Company;

**"Company"** means Cyalume Technologies, Inc. or any of its affiliated companies;

**"Contract"** means any contract or Purchase Order between Company and the Customer incorporating these conditions for the sale of Products and/or the provision of the Services;

**"Customer"** means the person or entity whose order for Products and/or Services is accepted by Company;

**"Liability"** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities including but not limited to any claims under an indemnity;

**"Order"** means the same as Contract;

**"Products"** means any products and/or goods ordered from Company by the Customer or to be supplied by Company to the Customer and/or any goods, products and/or materials which are utilized in the performance of the Services and in which title is intended to pass once the Services have been completed;

**"Services"** means the services and/or work to be performed by Company for the Customer;

**"Website"** means any and all websites used by Company to advertise and/or sell its products and/or services from time to time.

### 2. Basis Of Contract

**2.1** These conditions shall govern the agreement between Company and the Customer to the exclusion of any other terms or conditions, even where the orders placed by the Customer are not expressed to be subject to them. Any orders placed via a Website shall be subject to any additional terms and conditions applicable to the use of the Website.

**2.2** No variation to these conditions shall be binding on Company unless contained in Company's quotation or agreed in writing between the Customer and an authorized representative of Company.

**2.3** Company's employees, sub-contractors and/or agents are not authorized to make any representations or warranties concerning the Products unless confirmed by Company in writing.

**2.4** The Customer acknowledges that it does not rely on any representation and/or warranty which have not been made in accordance with these conditions.

### 3. Orders And Contract

**3.1** Quotations are not binding unless a Customer Contract is placed and accepted by

Company (unless stated otherwise) and shall remain valid for a period of 90 days unless otherwise specified by Company. Quotations may be withdrawn by Company at any time during this period by oral or written notice.

**3.2** The Contract between Company and the Customer shall come into effect on Company's acceptance of the Customer's order.

**3.3** Company shall not be liable for any loss or damage arising from its failure to accept any orders of Customer.

### 4. Delivery and Acceptance

**4.1** Dates for delivery are estimates only and are not guaranteed. Company will use all reasonable commercial practices to ensure delivery on the dates specified. These dates are subject to change. In this event Company, will endeavor to provide reasonable notice of any such delays as soon as practicable. Delivery within fifteen (15) days before or after the estimated delivery date shall be considered timely. Company may, at its option, ship partial orders.

**4.2** Where Products are to be delivered in installments, each delivery shall constitute a separate and distinct contract and failure by Company to deliver, or any claim by the Customer in respect of, any installment shall not entitle the Customer to repudiate and/or terminate this Contract as a whole.

**4.3** The Customer shall have no right to reject Products and shall have no right to rescind for late delivery unless the due date for delivery has passed and the Customer has served on Company a written notice requiring the Contract to be performed and giving Company not less than 30 days in which to do so and the notice has not been complied with.

**4.4** The Customer shall be responsible at its own cost for all arrangements to unload the Products when delivered to the Customer.

**4.5** If the Customer refuses to take delivery of any Products then Company shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by the Customer and shall have the right to rescind this Contract.

**4.6** Delivery Term is Free Carrier Alongside (FCA) INCOTERMS 2020, unless otherwise agreed upon by Company. The named place where shipment is made available for shipment is Company's facility which will ship the product. Title and risk passes to the Customer at delivery, when the product is made available by Company to the freight forwarder.

**4.7** Formal Acceptance by Customer occurs at delivery, in accordance with clause 4.6.

### 5. Price and Payment

**5.1** The price of the Products will be as shown in the appropriate Company price list or as quoted, which may be amended from time to time. The price will be the current price at the date of the acceptance of the order or as set out in a valid quotation. All payments shall be

made in U.S. dollars via electronic funds transfer or by check.

**5.2** Except as otherwise stated by Company, prices are FCA Company, and the Customer shall reimburse Company for charges (if any) relating to export and import costs, transport, packaging and insurance.

**5.3** Company's prices are exclusive of any applicable VAT or other sales tax for which the Customer shall additionally be liable.

**5.4** Company's terms of payment shall be established at time of Order confirmation, subject to Company's credit policy and more specifically, the terms of credit offered by Company to the Customer. Time for payment shall be of the essence. Also, Company may, in its sole discretion, impose special credit restrictions at any time before accepting, fulfilling or completing any order(s) from Customer.

**5.5** Unless otherwise specified in writing, all invoices hereunder are due and payable by Customer in full within thirty (30) days of the date of invoice, without deduction or set-off. Customer shall not withhold undisputed portions of payments due under an invoice. Payments not received within thirty (30) days of the invoice date shall be considered overdue. In addition to any other rights and remedies available to the Company, at law or otherwise, unpaid overdue invoices shall be subject to a late payment charge of one and one-half (1.5%) percent per month (or the maximum rate permitted by law, whichever is lower). Customer agrees to reimburse Company for its attorneys' fees, court costs, and any other costs reasonably incurred in collecting delinquent payments.

**5.6** The Customer shall pay all sums due to Company under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.

**5.7** Payment shall not be deemed to be made until Company has received either cash or cleared funds in respect of the full amount outstanding.

**5.8** Company shall be entitled to render an invoice to the Customer in accordance with any payment terms agreed between Company and the Customer and/or at any time on or after delivery/part delivery of the Products.

**5.9** If payment in full is not made to Company when due then Company may withhold or suspend future or current deliveries of the Products and delivery and/or performance under any other agreement with the Customer.

### 6. Specifications

**6.1** Any specification supplied by Company to the Customer shall only be approximate unless agreed by Company in writing.

**6.2** The quantity, quality, description and/or specification for the Products and/or the Services shall be that set out in Company's quotation (if agreed by the Customer) or the Customer's order (if agreed by Company)

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unless otherwise agreed in writing by the parties.

**6.3** The Customer is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Products and/or Services.

**6.4** Details and/or specifications in any Brochure, on any Website or in any price lists (including but not limited to technical data, dimensions and weights produced by Company) are intended as a guide only and only give a general approximation of the Products and/or Services.

**6.5** The Customer agrees to indemnify and keep indemnified Company against any Liability arising out of Company's use of specifications, details and/or drawings supplied by the Customer.

**6.6** Company reserves the right to make changes to the specification of the Products and/or Services at any time provided that they do not have a material adverse effect on the quality and/or performance of the Products and/or the Services.

**6.7** If Company does make changes to the specification of the Products and/or Services which have a material adverse effect then the Customer shall have the right to cancel the affected Contract without Liability.

**6.8** Company reserves the right to withdraw Products from a Brochure or from a Website at any time. Where a Product has been withdrawn and/or is no longer available, Company shall be entitled to (where possible) offer the Customer a reasonable alternative. If Company does withdraw a Product from a Brochure and/or a Website and no reasonable alternative is available, the Customer shall have the right to cancel the Contract without Liability.

### **7. Intellectual Property Rights And Confidentiality**

**7.1** The Customer shall not make any modification to the Products or their packaging, nor alter, remove, or tamper with any trademarks used on or in relation to the Products.

**7.2** All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trademarks (whether registered or unregistered), skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products, their packaging and/or arising from the Services shall be owned by Company absolutely.

**7.3** The Customer agrees that, at Company's cost, it will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 7.2 above and/or to assist Company in the application, registration, renewal and/or protection of such intellectual property rights.

**7.4** Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

### **8. Site For Services**

**8.1** The Customer will allow and/or procure sufficient access to Company's employees, subcontractors and/or agents to allow them to carry out the Services.

**8.2** Company shall inform the Customer in advance of the equipment and/or facilities that it will require in order to perform the Services.

**8.3** If Company is providing training to the Customer's personnel, Company shall inform the Customer of the minimum qualifications and/or experience that those personnel must hold.

### **9. Property**

**9.1** Company shall retain ownership of the Products until title has passed to the Customer in accordance with clause 4.6.

**9.2** Until Company has received payment in full in cash or cleared funds of all sums due and/or owing for all Products and/or Services supplied to the Customer by Company under this Contract, the Customer shall keep the Products insured for the price at which the Products were sold to the Customer against all insurable risks and shall ensure that Company is named on such policy of insurance as loss payee. Any monies received from the Customer by Company in accordance with this clause shall not discharge the Customer's liability to pay the price for the goods plus interest accrued in accordance with clause 5.5 but shall be set off against any such liability.

### **10. Default**

**10.1** If the Customer:

(i) fails to make any payment to Company when due;

(ii) breaches the terms of this Contract (and, if the breach is capable of remedy, has not remedied the breach within 30 days of receiving notice requiring the breach to be remedied);

(iii) persistently breaches any one or more terms of this Contract;

(iv) pledges or charges any Products which remain the property of Company, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction; or

(v) Appears reasonably to Company to be about to suffer any of the above events then Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

**10.2** If any of the events set out in clause 10.1 above occurs in relation to the Customer then:

(i) Company may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Products owned by Company may be and repossess and dispose of or sell any Products found which are owned by Company so as to discharge any sums due to Company under this Contract or any other agreement with the Customer;

(ii) Company may require the Customer not to resell or part with the possession of any Products owned by Company until the Customer has paid in full all sums due to Company under this Contract or any other agreement with the Customer;

(iii) Company may withhold delivery of any undelivered Products and stop any Products in transit;

(iv) Company may withhold the performance of any Services and cease any Services in progress;

(v) Company may cancel, terminate and/or suspend without Liability to the Customer any contract with the Customer; and/or,

(vi) all monies owed by the Customer to Company shall immediately become due and payable.

### **11. Warranty**

**11.1** Company warrants that the Products and/or Services will be free from defects in materials and/or workmanship for a period of 12 months or longer period as stated in the product documentation –

(i) in the case of Services, the date of completion of the performance of the Services; and/or,

(ii) in the case of Products, the date of delivery of the Products to the Customer.

**11.2** The warranty in clause 11.1 above is given by Company on condition that Company shall be under no Liability:

(i) in respect of any defect in the Products and/or Services arising from any drawing, design or specification supplied by the Customer, or merchantability or fitness for a particular purpose;

(ii) in respect of any faults arising after risk in the Products has passed which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Products and/or Services as appropriate; and/or,

(iii) in respect of any faults or defects caused by willful damage, abnormal working conditions, failure to follow Company's instructions, misuse, alteration or repair of Products and/or Services without Company's approval, improper maintenance or negligence on the part of the Customer or a third party; and/or

(iv) in respect of any defect in the Products caused as a result of fair wear or tear.

**11.3** If any Products and/or Services prove to be defective and are covered by the warranty in clause 11.1 above then Company shall at its

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sole option either repair or replace or re-perform such Products and/or Services within a reasonable period of time of being notified of the defect. Provided Company complies with this clause the repair, replacement and/or re-performance shall be the Customer's sole remedy in respect of claims under the warranty under clause 11.1 above.

**11.4** Any work carried out by Company which is not covered by the warranty in clause 11.1 above will be charged for at a reasonable price.

**11.5** Company shall have no Liability to the Customer under the warranty in clause 11.1 above unless any defect is notified to Company within 30 working days of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by the Customer.

**11.6** The warranty in clause 11.1 above will not apply if the Customer has not paid in full for the relevant Products and/or Services on the due date for payment.

### **12. Repairs and Replacements**

**12.1** Company will at its option either repair, replace free of charge or re-perform any defective Products and/or Services where the defect is apparent on inspection provided that the defect is notified to Company in writing within 3 working days of delivery of such Products or of performance of the Services.

**12.2** Any defective Products must be returned to Company for inspection if requested by Company before Company will have any Liability for defective Products.

**12.3** Company may at its sole discretion replace, repair free of charge or re-perform defective Products and/or Services which are not notified to Company within the specified time limit where in the opinion of Company the defect would not have been ascertainable on inspection and has been notified to Company as soon as reasonably practicable.

**12.4** Company will replace free of charge any Products missing from a delivery of Products provided that the missing items are notified to Company in writing within 7 working days of delivery or, in the event of total non-delivery, this fact is notified to Company within 14 working days of receipt of the invoice by the Customer.

### **13. Limitations on Liability**

**13.1** Company shall have no Liability:

(i) for defective Products and/or Services where the defect has been caused or contributed to by the Customer to the extent so contributed, including but not limited to where the Customer continued use of defective Products and/or Services;

(ii) For any loss and/or damage suffered by the Customer as a result of late delivery of the Products and/or late performance of the Services;

(iii) If the price for the Products and/or the Services has not been paid in full by the due date for payment;

(iv) for defective Products and/or Services, Products not dispatched or Products damaged or lost in transit unless the event is notified to Company within the appropriate time limit set out in this Contract; and

(v) To the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against Company.

**13.2** The Customer shall give Company a reasonable opportunity to remedy any matter for which Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so Company shall have no Liability to the Customer.

**13.3** Company shall have no Liability to the Customer for any:

(i) consequential losses;

(ii) loss of profits and/or damage to goodwill;

(iii) economic and/or other similar losses;

(iv) special damages and indirect losses; and/or

(v) business interruption, loss of business, contracts, opportunity and/or production.

**13.4** Company's total Liability to the Customer shall not exceed the Contract price. To the extent that any Liability of Company to the Customer would be met by any insurance of Company then the Liability of Company shall be extended to the extent that such Liability is met by such insurance.

**13.5** Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

(i) Liability for breach of contract and/or these Conditions of Sale;

(ii) Liability in tort (including negligence);

(iii) Liability for breach of statutory duty; and

(iv) Liability for breach of Common Law except clause 13.4 above which shall apply once only in respect of all the said types of Liability.

**13.6** All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

### **14. General**

**14.1** The Customer agrees to indemnify and keep indemnified Company against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by Company and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

**14.2** No waiver by Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

**14.3** Company shall have no Liability to the Customer for any delay in performance of this Contract to the extent that such delay is due to

any events outside Company's reasonable control including but not limited to acts of God, war, flood, fire, labor disputes, subcontractor delays, shortages of stock and/or raw materials, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If Company is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

**14.4** The Customer shall not assign its interest in the Contract (or any part) without the written consent of Company.

**14.5** All third party rights are excluded and no third party shall have any right to enforce this Contract.

**14.6** This Contract is governed by and interpreted in accordance with the laws of Florida.