



## 1. Acceptance of Order.

Seller is ODU-USA, Inc. These Terms and Conditions (“Terms”) shall be binding for any order (“Order”) placed by Buyer. If Buyer objects to one or more of the terms herein, such objection must be in writing and received by and accepted by Seller in writing prior to the commencement of performance by Seller. Any of Buyer’s terms or conditions which are contrary to these Terms shall only be valid when accepted in advance in writing by Seller. If any terms on the face of Seller’s Purchase Order, Invoice or Order Confirmation differ from, conflict with, or add to these printed terms, the face terms on such Seller’s Purchase Order, Invoice or Order Confirmation shall take precedence over these printed Terms. Any purchase order or other written form of Buyer shall be construed as an offer and shall not become an effective binding part of these Terms, unless signed by an authorized officer of Seller, together with a written agreement that it is incorporated into these Terms. Any alteration, variance, or waiver of these Terms requires the written approval of an authorized officer of Seller. Any pre-printed terms and any conflicting or additional terms on any Buyer purchase order or other Buyer document shall have no effect unless specifically accepted in writing by Seller.

## 2. Price.

List prices are subject to change without notice. Prices quoted by Seller are valid for thirty (30) days from date of quotation or as otherwise extended in writing by Seller, and must be accepted in writing within this time. After expiration of this period, Seller may, at its discretion, extend time of quotation or make a revised quotation. Prices quoted are contingent upon acceptance of delivery by the Buyer of all products subject to the Order within six (6) months. Seller reserves the right to correct clerical or typographical errors at any time, even after acceptance. Unless otherwise specified in writing, all prices are in United States dollars (“USD”) and exclusive of any applicable Federal, State and local taxes, tariffs, customs and duties. Buyer shall be solely responsible for compliance with any laws, rules, ordinances and regulations regarding the product, including, without limitation, any export laws (all of the above collectively, “Laws”). Buyer shall promptly pay any taxes which Seller or its agents may be required to pay or collect, under any existing or future Law (including, without limitation, any sales taxes). California sales tax shall be added to shipments made within California unless a valid resale certificate has been filed with Seller or its agents.

## 3. Shipment and Delivery.

FCA Incoterms 2020 Seller’s Facility San Diego, CA. All Orders shall be shipped Free Carrier (FCA) Incoterms 2020 Seller’s Facility San Diego, CA. Delivery is deemed to occur once the goods are loaded onto the carrier arranged by the Buyer at Seller’s Facility San Diego, CA. Shipping dates and/or delivery dates are estimates and are quoted based on conditions prevailing on the date of the quotations and are subject to reasonable rescheduling. Seller need not ship or deliver as quoted if Buyer has not met its payment or other contractual obligations. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for any remaining deliveries. Seller shall not be liable for delays due to causes beyond its reasonable control or due to acts of Buyer, acts of God, changes in local, State or Federal Laws, fires, strikes, floods, epidemics, pandemics, quarantine restrictions, terrorism, riot or other civil unrest, war, acts of violence, governmental orders, freight embargoes, delays in transportation, shortages of fuel or other materials, or similar circumstances to any of the above (collectively, “Force Majeure Events”). In the event of delay or anticipated delay, from any cause, including any Force Majeure Events, Seller shall notify Buyer in writing of the delay or anticipated delay. In no event shall Buyer be entitled to any damages as a result of delays in delivery or late delivery. Buyer shall have up to thirty (30) days after receipt to inspect the product. Unless Seller is notified in writing to the contrary during this period, delivered items shall be presumed to be accepted. Claims for shipment defects or damages or shortages shall be waived unless made within fifteen (15) days of receipt of the product by Buyer. To the extent any defects and damages are not discoverable during the inspection period, Buyer’s sole remedy shall be the warranty and damage limitations in Sections 7 and 8. Buyer acknowledges that the fees and costs payable pursuant to the Order will remain due and payable as contemplated under the Order, notwithstanding that the products may be determined to be non-conforming. If delivery is delayed by Buyer, product held for Buyer shall be subject to storage charges and shall be at the sole risk and expense of Buyer and Buyer assumes risk of loss during any holdover period.

## 4. Payments.

Unless otherwise specified in writing, Seller’s standard payment terms are net thirty (30) days from date of invoice. Based on Seller’s commercially reasonable judgment, if Buyer’s financial condition at

the time the product is ready for shipment does not justify the payment terms specified, Seller reserves the right to change the payment terms to require full or partial payment in advance, or to ship the product Cash on Delivery (COD) or any combination thereof. If the product is not paid for in full, Seller shall have been granted a security interest in the product and shall have all rights of a secured party thereon pursuant to the provisions of the California Commercial Code (the "Code"). Buyer shall, upon request of Seller, execute any Security Agreement, Financing Statement or other document required by the Code, and Seller shall have the right to require receipt of such executed documents prior to shipment of product. Buyer hereby grants to Seller a security interest in all product purchased hereunder. In furtherance of the foregoing, an irrevocable power, coupled with an interest, is hereby granted and reserved unto Seller to execute any such Security Agreement, Financing Statement or other document on Buyer's behalf and stead. Invoices will normally be submitted at time of shipment. In the case of partial shipments, payment shall be made pro rata based upon each shipment. Payment shall be made if unimportant parts are missing, which do not prevent the product from being used, or if subsequent work on the product is found to be necessary. If Buyer does not make payments when due, it shall without formal notice be liable to pay interest on overdue amounts from the due date, at a rate of one and one-half percent (1.5%) per month or the maximum amount allowable by Law, whichever is less. Buyer will pay Seller's cost of collection, including reasonable attorneys' fees. Payment of such interest does not release Buyer from its obligation to make payments on the agreed dates. Buyer shall not, at any time, be entitled to set off any amount owed by Seller to Buyer against any amount payable by Buyer to Seller.

## **5. Passage of Title.**

The title and right of possession to the product remains with Seller until delivery to the carrier or the full contract price (including, if any, deferred payments and any interest charges) has been paid to Seller, whichever occurs later. Buyer agrees to perform all acts necessary to protect and maintain this title and right. Passage or non-passage of title shall not affect risk of loss.

## **6. Risk of Loss.**

Buyer bears the risk of loss or damage to the product from the time that Seller loads the product onto the carrier at Seller's Facility San Diego, CA and during all transportation and delivery of the product to the site designated by Buyer.

## **7. Warranty And Damages Limitation.**

Seller warrants that the product delivered will be free from defects in material and workmanship (other than defects attributable to Buyer's drawings, designs, specifications or other Buyer information (or any combination thereof)) for a period of twelve (12) months from the date of shipment, and if the product is designed by Seller, free from defects

in design, for a period of twelve (12) months from the date of shipment. Replacement product and repairs performed under this warranty shall be warranted for the remainder of the original warranty period. Buyer shall report any claimed defect in writing to Seller upon discovery and in any event, within the warranty period. No product shall be returned to Seller or its agents without written authorization by Seller or its agents. Upon receipt by Seller of any claim, Seller or its agents shall be given a reasonable opportunity to inspect such product and determine (in its sole discretion) if the product is defective. Seller, at its sole discretion, shall promptly repair or replace the product at the original delivery point of shipment. Buyer shall be solely responsible for any shipping charges for return of any product to Seller's Facility San Diego, CA and shipment of any repaired or replaced product from Seller's Facility San Diego CA to the destination point of Buyer. Buyer assumes all risk of loss during shipment for any warranty return. If Buyer returns, repairs or replaces product without Seller's prior written approval, Seller is relieved of obligation to Buyer under this section with respect to such product. The product shall not be deemed defective by reason of normal wear and tear and this limited warranty shall not apply to (i) product where the product has been subjected to mishandling, misuse, abuse, alteration, damage, neglect or improper or inadequate storage, maintenance, repair or installation, (ii) product that has been subjected to unauthorized or improper repair, installation, assembly, processing or otherwise that alters physical or electrical properties, (iii) damage due to operation of the product other than as per the specifications or use with other components, materials or equipment for which it is not intended, (iv) any defect, malfunction or failure caused by accidents, unauthorized repair, improper installation or removal of component parts, or use of the product with components or equipment for which it is not intended, (v) any act of God (such as, but not limited to, floods, hurricanes, earthquakes or fires), or (vi) any combination of the above. No employee, agent, dealer or other person is authorized to give any warranties on behalf of Seller or its agents or to assume for Seller or its agents any other liability in connection with any of its products, except in writing and signed by an authorized officer of Seller. No other express warranty is given and no affirmation of Seller, by words or action, will constitute a warranty. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY WAIVED TO THE FULLEST EXTENT PERMITTED BY LAW. There are no warranties which extend beyond the description on the face hereof. The use of Seller's product should be in accordance with the provisions of the National Electric Code, UL and/or other industry or military standards that are pertinent to the particular end use of the product. Installation or use not in accordance with these codes and standards could be hazardous, and Buyer hereby agrees to indemnify Seller against any and all claims as further set forth in Section 11 below, which arise or are in connection with the use or installation of product not in accordance with the above-referenced codes and standards. Any indemnity obligations will survive expiration or termination of these Terms.

## **8. Limitation Of All Remedies.**

In no event will Seller be liable for any special, incidental, punitive, indirect or consequential damages of any kind, including but not limited to loss of profits, lost revenues, lost business opportunity, loss of use, or costs of procurement of substitute goods or services, based on breach of warranty, breach of contract, negligence, strict liability, tort, product liability, or any other legal theory to the fullest extent permitted by law, even if Seller has been advised of the possibility of such damages. Buyer expressly agrees that Seller's sole maximum liability for damages for any cause whatsoever shall be limited to the total price received by Seller for the product at issue and when Buyer accepts the product, Buyer is precluded from seeking any other damages against Seller.

## **9. Allocation of Risks.**

This agreement allocates the risks of product failure between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the product. Buyer acknowledges that it has read this agreement, understands it and is bound by its terms.

## **10. Termination.**

Either party may terminate this Order or work under this Order in whole or in part (i) immediately by written notice if the other party commits a material breach of any one or more of its terms and fails to cure such default within thirty (30) days after the non-breaching party gives written notice of such breach (including the nature of the breach) or if such breach cannot be cured within such thirty (30) day period, within a commercially reasonable time thereafter, except that any failure of Buyer to make any payments when due must be cured within such thirty (30) day period, or (ii) upon five (5) days advance written notice if either party becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors. Termination shall not relieve either party from any liability arising from any breach of these Terms. Upon termination for any reason, in addition to any other amounts owed to Seller, Seller shall be paid for all product shipped prior to termination.

## **11. Indemnification.**

Buyer agrees to indemnify, defend and hold harmless Seller and its officers, directors, shareholders, employees, affiliates, independent contractors, agents, representatives, successors and assigns (collectively, "Seller Indemnitees"), from any and all actions, causes of action, claims, demands, losses, obligations, liabilities, damages, recoveries, settlements, deficiencies, costs and expenses (including, without limitation, interest, penalties, accounting fees, attorneys' fees and expert witness fees) incurred by Seller Indemnitees, known or unknown, contingent or otherwise, directly or indirectly related to or arising from any of the following: (a) Buyer's breach of these Terms; (b) possession or use of the product by Buyer or any third party (or both);

(c) any alteration, change or mishandling of the product by Buyer or any customer of Buyer (or both); (d) the failure to use Seller's product in accordance with the provisions of the National Electric Code, UL and/or other industry or military standards that are pertinent to the particular end use of the product; (e) any drawings, designs, specifications, or other information provided by Buyer; (f) Buyer's violation of any Laws or the rights of any third party; or (g) any combination of the above. This indemnity will survive the termination or expiration of these Terms. This indemnity will not apply to any such loss, claim or damage caused solely by the intentional misconduct of Seller.

## **12. Standards and Changes.**

Except for written specifications of Buyer which are expressly agreed to in writing by an authorized officer of Seller in advance, products ordered shall be produced in accordance with Seller's standard practices. Buyer may make reasonable changes in the character or quantity of the product, or in the manner or time of performance of this Order if communicated to Seller in writing signed by a duly authorized representative of Buyer and accepted by a duly authorized representative of Seller (in its sole discretion) in writing in advance. An equitable adjustment in the price and time for performance will be mutually agreed to by the parties in writing, acting in good faith, if such changes result in a decrease or increase in the Seller's cost or time of performance. Seller may, without Buyer's approval, make changes to the product that do not affect form, fit or function.

## **13. Confidentiality; Proprietary Information.**

Unless otherwise expressly agreed by the parties in a contemporaneous or subsequent writing to the contrary, Seller shall own all right, title, and interest in and to all Intellectual Property contained or embodied in drawings, documents, designs, schematics, specifications, information, data, prototypes, samples, software, processes, and other items supplied or disclosed by either party in performance of this Order ("Product Information") and, for good and sufficient consideration, Buyer hereby assigns to Seller all right, title, and interest in and to the Product Information, including without limitation, all patent rights, copyrights, trademarks, all rights to derivative works and all rights of reproduction, distribution and display. "Intellectual Property" means all service marks, trademarks, trade dress, trade secrets, copyrights, copyright applications, patents, patent applications, ideas, know-how, processes, techniques, methods, inventions, and other intellectual properties and proprietary rights, in whatever form, whether or not contained or embodied in drawings, designs, specifications, electronic data, prototypes, samples, software, documents or other items. "Confidential Information" means any trade secret or confidential information (or both) of Seller, and whether disclosed directly or indirectly by Seller, in writing, orally, or by inspection of tangible property, including, without limitation, manufacturing, marketing, pricing and sales, financial information, budgets, business plans and strategies, customers and customer information, markets, agree-

ments, processes, techniques, hardware configuration information, know-how, prototype, engineering, manufacturing, manufacturers, software, source code, object code, ideas (whether or not patentable), concepts, methods, developments, formulas, data, inventions, suppliers, vendors, trade secrets, patents, patent applications, and other confidential Intellectual Property, drawings, schematics, designs, models, molds, specifications, technology, research and development, production, engineering, and technical information relating to Seller's products (whether currently in production, in process or contemplated for production in the future), and all information that is not generally known by third parties, and information that is disclosed by Seller and is subject to confidentiality rights of a third party. Buyer shall hold all Confidential Information in confidence and use it solely as strictly necessary to utilize the product and shall not reverse engineer the product or use Confidential Information for any other purpose, and shall not reproduce, distribute or disclose Confidential Information to any third party or allow any third party to reproduce, distribute or disclose such information, without Seller's prior written consent. Notwithstanding anything in these Terms to the contrary, the confidentiality obligation for any information that is a trade secret shall survive for so long as such information remains a trade secret under applicable Laws, and any confidentiality obligations with regards to patent information shall last until such information no longer qualifies as confidential under applicable patent Laws. Buyer shall only disclose Confidential Information to employees and independent contractors who may require use of such information in the performance of their duties, but only if such employees and independent contractors agree to keep such information confidential and are bound by confidentiality obligations at least as strict as set forth in this paragraph. The confidentiality obligations of Buyer survive termination or expiration of these Terms. Any non-disclosure agreement signed by the parties is hereby incorporated by reference and made a part of these Terms and any conflicting or additional terms in such non-disclosure agreement shall control over these Terms. If Buyer is or may be compelled by a subpoena or other legal process to disclose any Confidential Information, Buyer shall promptly notify Seller and shall assist Seller, at Seller's expense, in opposing the disclosure.

#### **14. Federal Acquisition Regulations & Flow Down Clauses.**

If this is a government related Order and Buyer has specifically noted Federal Acquisition Regulation (FAR) clauses in (or as an attachment to) Buyer's Order, such FAR clauses that are mandatory are incorporated by this reference as if set out fully herein, except the word "Buyer" shall be substituted for the words "Contracting Officer" and the term "Seller" shall be substituted for "Contractor" wherever such words appear. Notwithstanding the above, no other provisions of Buyer's purchase order shall be applicable and any of Buyer's terms or conditions which are contrary to these Terms shall only be valid when accepted in advance in writing by Seller.

#### **15. Relationship of Parties.**

Seller and Buyer are independent contracting parties and nothing in these Terms shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Buyer and Seller each have the power and authority to enter into these Terms and such Terms will be binding and enforceable on Buyer and Seller in accordance herewith.

#### **16. No Implied Waiver.**

The failure of either party at any time to require performance by the other party or make any election under any provision of these Terms shall in no way affect the party's right to require such performance or make such election at any time thereafter, nor shall the waiver of either party of a breach of any provision of these Terms constitute a waiver of any succeeding breach of the same or any other provision. Any waiver must be in writing and signed by the party so waiving.

#### **17. Entire Agreement.**

These Terms and the Seller's Purchase Order, Sales Order Confirmation, Invoice or other quotations and order confirmations of Seller under which they have been deemed applicable supersede all prior and contemporaneous communications, understandings and agreements of Buyer and Seller (whether written or oral).

#### **18. Modification / Severability / Further Assurances.**

These Terms may not be modified or amended in any way unless such modification or amendment is in writing and signed by an authorized officer of each Seller and Buyer. If any provision of these Terms is determined by a court of competent jurisdiction to be invalid under any applicable law, the portion deemed to be invalid will be deemed omitted, and the remainder of these Terms shall remain enforceable if the essential terms and conditions of these Terms for each party remain valid, binding and enforceable. The parties agree to execute any further documents and provide any requested assurance reasonably necessary for the parties to effectuate the purpose of these Terms.

#### **19. Attorneys' Fees.**

In the event of a claim, suit or controversy, including without limitation, a suit to collect payment or an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to, phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees to be fixed by the court. The court or arbitrator shall determine the party that is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. Such recovery shall include court costs, out-of-pocket expenses and attorneys' fees on appeal, if any.

## **20. Governing Law; Jurisdiction; Venue.**

This agreement is entered into in Ventura County, California and shall in all respects be construed and governed by the laws of the State of California. Buyer and Seller agree and accept that any legal action or proceeding with respect to this agreement shall be brought in the Federal or state courts for the State of California, County of Ventura, and the parties expressly waive any objection to personal jurisdiction, venue or inconvenient forum. These Terms are issued solely to Buyer and are non-transferable. Seller may assign its rights and duties under these Terms, in whole or in part, without Buyer's consent. These Terms shall be binding upon the parties hereto and upon each of their permitted successors and assigns.

## **21. ITAR.**

The Buyer acknowledges that ODU-USA, Inc. ("ODU") products are derived from U.S. origin technology and those products are controlled by the U.S. Department of Commerce's Export Administration Regulations ("EAR") or the U.S. Department of State's International Traffic in Arms Regulations ("ITAR") and that the Buyer will not export, re-export, divert, or disclose, directly or indirectly, ODU products without complying strictly with the export control laws of the U.S. including, without limitation, obtaining prior approval, as applicable. The Buyer further acknowledges and agrees that this includes ensuring that the consignee or ultimate end user is not listed in any U.S. Government restricted party lists or subject to sanctions or embargoes imposed by U.S. Department of Treasury, Department of Commerce and Department of State or that the end use of the ODU product is not used in the proliferation of weapons of mass destruction, nuclear applications, missile technology, chemical or biological weapons. The Buyer further acknowledges and agrees to indemnify ODU against, and hold it harmless from, any cost, loss, damage, or liability (including reasonable attorneys' fees) arising from or related to the failure of the Buyer to comply with its obligations with these terms. Any indemnity obligation will survive expiration or termination of these terms.