

**TERMS AND CONDITIONS OF SALE
ALTA TECHNOLOGIES, INC.**

Alta Technologies, Inc. (hereinafter referred to as "Seller") agrees to sell and supply to Buyer and Buyer agrees to purchase and accept the products ("Product(s)") described in this confirmation ("Confirmation") subject to the following:

ACCEPTANCE

- 1) *This confirmation expressly limits acceptance to the Terms and Conditions set forth herein, constitutes the sole and exclusive agreement between the parties, and supersedes any other prior, contemporaneous and/or subsequent offers, counteroffers and/or proposals by the buyer, concerning the subject matter hereof.*
- 2) This Confirmation shall be deemed to be accepted and shall be a binding contract for the sale of the Product upon the first to occur of the following events:
 - i) Buyer -or its agent executing and delivering the acknowledgment copy of this Confirmation to Seller;
 - ii) Seller shipping or delivering the Product to Buyer. The terms and conditions set forth in this Confirmation shall constitute the sole and exclusive agreement between Seller and Buyer.

PACKING AND PRICING

- 1) Product shall be suitably packed and shipped as designated by Seller in accordance with the requirements of the carriers.
- 2) Prices for Products are based on F.O.B. Seller's Facilities in accordance with the Uniform Commercial Code in effect in New Jersey unless otherwise specified in writing.
- 3) Unless otherwise specifically set forth in this Confirmation, the stated price shall not include charges for any duties, levies, freight charges, packing charges, installation charges and any other charges whatsoever in connection with the Product-.
- 4) Seller reserves the right to sell remanufactured Product.

DELIVERY

Shipping and delivery dates are approximate and are given by Seller in good faith, but are not guaranteed unless otherwise specifically agreed in writing. Buyer shall be responsible for all storage and other costs relating to Buyer's failure to accept delivery pursuant hereto. Unless otherwise expressly agreed on in this Confirmation, delivery will be made F.O.B. Seller's Facilities. All risk of loss shall pass to Buyer upon delivery of the Product by Seller to a carrier.

PAYMENT

Unless otherwise specified in this Confirmation, payment by Buyer shall be due 30 days after shipment of the Product by Seller. Time of payment is of the essence. In any action by Seller against Buyer to collect payment, Buyer shall pay or reimburse Seller for any and all costs and expenses, including, without limitation, reasonable attorneys fees, incurred by Seller in connection with such action.

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WARRANTY

- 1) Seller warrants to Buyer that all Products shall be free from defects in design, materials and workmanship.
- 2) Buyer shall notify Seller of any rejection for failure to conform to these Terms and Conditions, giving detailed reasons for rejection. Failure of Buyer to reject any Product within 10 days after receipt shall constitute acceptance.
- 3) If Buyer claims such nonconformity within such 10 days, Buyer shall allow Seller a reasonable time to remedy the defect. Buyer shall render necessary assistance to Seller, and shall furnish adequate means for operating and testing Products.
- 4) Should Products prove to be nonconforming, and the nonconformity is not remedied, Buyer must return the particular Product at its expense. Buyer shall immediately notify Seller of the return by registered mail addressed to Seller, and Seller may then, at its option, either replace Products or rescind its Confirmation for defective Products.
- 5) If Seller does cure the nonconformity, Buyer shall pay the full price as set forth in Buyer's Confirmation accepted by Seller.
- 6) Any action on a breach of Seller's obligations under these Terms and Conditions must be commenced within one year of shipment date.
- 7) Seller's warranty does not apply to any Products to the extent they have been subject to
 - i) Other than normal wear and tear, or
 - ii) Improper use, improper installation, improper repair by unauthorized service personnel, tampering, negligence, abuse or accident.

Anything to the contrary herein notwithstanding, in no event shall seller's liability to buyer with respect to any defective product exceed the actual purchase price paid by buyer to seller with respect to such product, and in no event shall seller be liable under any agreement to buyer for any indirect, incidental, consequential, special or punitive damages, including the loss of business opportunities and/or lost profits, however caused, whether as a consequence of the breach of an agreement, the negligence of seller and its employees or agents, or otherwise.

Suggestions and advice by Seller for the use of Products are furnished gratuitously and are based upon information believed to be reliable. Buyer's use of or reliance upon the same shall be at Buyer's risk.

- 8) *Seller's sole warranty and liability with respect to the sale of the products to buyer and use of the products by buyer is herein set forth in its entirety.* Any agreement between Buyer and Seller concerning advice or assistance given to Buyer by Seller for a separate fee would be contained only in a separate written agreement.
- 9) *This warranty is in lieu of all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose.*

Alta Technologies, Inc. P.O. Box 100 Pennington, NJ 08534 (609) 538-9500 www.altatechinc.com

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CANCELLATIONS

Orders cancelled by the Buyer at any time prior to delivery are subject to charges for all costs and liabilities incurred by the Seller up to such time the Seller is notified in writing of intent to cancel.

INTELLECTUAL PROPERTY

Any intellectual or industrial property rights of whatever kind created by, relating to, or obtained through the production of the Products covered by this Confirmation shall belong to and remain the sole property of Seller. Seller retains title and all associated rights to any of its intellectual property supplied to Buyer, including trademarks, trade names, copyrights, patents, product packaging, associated markings, advertising, marketing materials, manuals, specifications and designs, and all intellectual property contained in models, patterns, samples, fixtures, jigs, and custom made tooling, designed, built, and/or modified by the Seller, all of which may not be disclosed to third parties or copied by Buyer without Seller's prior written consent, which consent may be unreasonably withheld. All such intellectual property, including copies thereof, shall be returned upon Seller's request. No drawings, specifications or other information provided by Buyer to Seller shall be deemed to be confidential information unless specifically designated as confidential in writing by Buyer. Buyer further warrants that the Products ordered herein and any materials, supplies or other articles furnished to the Seller to facilitate the completion of this Confirmation, do not infringe any United States or foreign patents and the Buyer, upon due notice and at its own expense, will defend any suit or action which may be instituted against the Seller for the alleged infringement of any patent involving any of the Products covered by this Confirmation and the Buyer agrees to pay all costs (including attorney's fees), damages and profits recovered in any such suit or action.

TERMINATION

- 1) Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of this Confirmation while investigating any claim relating to prior shipments (under any invoice) of Product or in the event of any of the following circumstances:
 - i) Buyer fails to take delivery of or to pay for the Product as required herein, or breaches any other term of this Confirmation or any other invoice between Seller and Buyer;
 - ii) Seller becomes bankrupt or insolvent or if a receiver takes possession of any material part of Buyer's assets; or
 - iii) Reasonable grounds for insecurity arise with respect to the performance by Buyer of its obligations under this Confirmation, and Seller so notifies Buyer;
 - iv) Seller is unable to perform its obligations as a result of causes beyond its reasonable control, including, without limitation, failure of suppliers or subcontractors, strikes, shortages of labor or materials, acts of God, government restrictions, wars, insurrections or terrorist activities.

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APPLICABLE LAW

The rights and obligations of the parties hereto shall be determined according to the laws of the State of New Jersey and this Confirmation and the contract arising there from shall be deemed to be made in New Jersey.

TAXES

Any taxes, excises, or fees whatsoever of any National, State or local government or any of their political subdivisions presently existing or hereinafter arising in connection with the manufacture and sale of the Products designated with this Confirmation will be paid by Buyer.

LIABILITY/INDEMNITY

Buyer agrees to protect, defend, reimburse, indemnify and hold Seller free and harmless at all times from and against any and all claims, liability, expenses, losses, demands, damages, fines, causes of action and costs (including attorney's fees) of every kind and character from any cause whatsoever made, incurred, sustained, or initiated by any party hereto, any party acquiring an interest hereunder, any agent or employee of any parties hereto, or of any party whatsoever, or any governmental agency arising out of, incident to, or in connection with this Confirmation, or the performance, non-performance or purported performance of the work or services or breach of terms thereof.

AMENDMENTS

No agreement or understanding to modify this confirmation shall be binding upon seller unless made in writing and signed by authorized party for seller.

COMPLIANCE

- 1) Buyer acknowledges that Seller has informed it that US law and US Export Administration Regulations govern, and may prohibit the re-export or other disposition of Products and related technical data received by Buyer or its customers without prior US government approval.
- 2) Buyer agrees that diversion of Products from destinations identified in the Shipper's Export Declaration constitutes a fundamental and material breach under these Terms and Conditions and Buyer's Confirmation accepted by Seller. If Products are diverted from intended destinations, the sale may be voided in the sole discretion of Seller, and all right, title and interest in Products shall revert to Seller. In the event of such breach, Buyer shall be liable to Seller for all costs, fees and expenses incurred by Seller in connection with recovery of Products, including reasonable attorney fees.
- 3) Buyer agrees and warrants that in performance of its obligations under these Terms and Conditions and Buyer's Confirmation accepted by Seller, it will comply with US Foreign Corrupt Practices Act.