

## **SALES ORDER ACKNOWLEDGMENT (SOA) / QUOTATION TERMS AND CONDITIONS**

### **Governing Terms**

All products and services offered for sale by Viant, ("Seller") and all orders are subject to the terms and conditions stated herein. Except as expressly agreed by an authorized representative of Seller in writing, no other terms and conditions, including any terms and conditions attached to, or contained within, Buyer's request for quotation, acknowledgment, purchase order or other contract documentation shall apply. Buyer's acceptance of the Products delivered by Seller shall constitute an affirmation by Buyer that the terms and conditions set forth herein govern the purchase and sale of the Products and that Buyer waives any and all objections to any such terms and conditions. THE TERMS OF THIS CONTRACT SHALL SUPERSEDE ANY ADDITIONAL, DIFFERENT OR CONFLICTING TERMS PROPOSED BY BUYER OR CONTAINED ON BUYER'S PURCHASE ORDER OR ANY DOCUMENT OR INSTRUMENT SUBMITTED BY BUYER.

### **Indemnity and Intellectual Property Disclaimer**

Seller cannot guarantee that the Products will not infringe issued or pending patents and makes no warranties or representations, express or implied, against intellectual property infringement. Buyer bears sole responsibility for patent clearance and infringement and for protecting and registering any intellectual property rights covering the Products, as applicable. Buyer agrees to indemnify, defend, and hold harmless Seller and its directors, agents, employees and contractors, from and against any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) suffered or incurred as a result of any claim related directly or indirectly to the Products, including but not limited to claims for Seller's default, design defects, product liability, product recall, noncompliance with U.S. Food and Drug Administration or other regulatory standards and patent infringement, except to the extent attributable to Seller's gross negligence or willful misconduct as determined by a court of competent jurisdiction. Nothing herein shall be construed as a license or sublicense to operate under any Seller or third party owned patent or other intellectual property right.

### **Prices, Taxes, Payment, Title, Risk of Loss**

All prices are as quoted and are subject to change. Any tax, tariff, duty, custom or other fee of any nature imposed upon this transaction by any federal, state or local governmental authority shall be paid by Buyer in addition to the price quoted or invoiced. In the event Seller is required to prepay any such tax, Buyer will reimburse Seller. Payment terms shall be net 30 days after shipment by Seller or per terms of existing negotiated contract. An interest charge equal to 1 1/2% per month (18% per year) will be added to invoices outstanding beyond 30 days after shipment. In addition Seller reserves the right to require pre-paid payment terms from any Buyer whose account is overdue for a period of more than 60 days or who has an unsatisfactory credit or payment record. Seller may also refuse to sell to any person until overdue accounts are paid in full. Prices as quoted are based upon certain assumptions and/or information, some of which may be provided by Customer, and which include, but are not limited to annual demand volumes, minimum order quantities, information regarding the type, size and condition of tooling, bill of material costs, assembly method, testing and packaging requirements. To the extent that such information or assumptions are inaccurate, thereby effecting manufacturing costs, Supplier may adjust Product pricing, at any time, upon written notice to Customer. Further, prices are subject to change as a result of any increase in the cost of supplies or components; and/or due to increases in the cost of production due to hostilities, war, or other disturbances, domestic or foreign, or due to any Federal,

State or Municipal law, including state of federal minimum wages regulation changes or regulatory measure hereafter adopted. Title to the Products shall transfer to Buyer upon the shipment of the Products from the Seller facility. The risk of loss or damage to the Products shall be assumed by Buyer upon the shipment of the Products from the Seller facility.

### **Delivery Quantity**

Unless otherwise agreed to in writing by the parties, a ten percent (10%) overage or underage of Product delivered shall be accepted by the Buyer. Orders requiring exact quantities may be filled at a higher price.

### **Disclaimer of Express and Implied Warranties and Damages, Limitation of Liability**

Buyer shall be responsible for making its own determination of suitability and completeness for use and conducting any necessary testing. Except as expressly provided in this document, SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES MADE WITH RESPECT TO THE PRODUCTS AND EXPRESSLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. Buyer's remedies under any Seller's warranty shall be limited to repair or replacement of the Product or component thereof which failed to conform to such warranty for a maximum period of one year after sale of product. In no event shall Seller (including its affiliates and subsidiaries) be liable for anticipated or lost profits or for special, punitive, indirect, incidental, or consequential loss or damages

### **Inspection and Returned Goods**

Buyer shall have the right to inspect the Products within 30 days of receipt thereof. Buyer shall notify Seller in writing within 30 days of receipt thereof if the Products do not meet specification, and Buyer shall return defective Products to Seller. If Seller is not notified within the allowed period of inspection set forth above, such Products shall be deemed to be accepted by Buyer and Buyer shall have no further recourse. Seller, in its sole discretion, may agree to accept the Products back where Buyer made a mistake and ordered the wrong part or the Buyer ordered the incorrect number of the Products, provided that the order was received by the Buyer not longer than forty-five (45) days from the date of the request to return Products. Under no circumstances shall trial kits or custom run orders be returnable. If the Products are returned, they must be packaged similar to the way they were packaged by Seller in order to protect the contents from being damaged. If, upon receipt at Seller, the Products are found to be damaged, then no credit or partial credit (as applicable) will be issued. The Buyer shall be responsible for all costs associated with shipping to and from Seller. Large orders of stock or standard items may be returnable: however a minimum re-stocking charge of \$150.00 will apply.

### **Governing Law**

This Contract and its terms and conditions, shall be governed by and construed in accordance with the laws (other than those relating to conflict of laws questions) of the State of Delaware. Buyer agrees that any action at law, suit and equity or other judicial proceeding with respect thereto must be brought and maintained in the federal or state courts of record situated in the State of Delaware.

### **Cancellation Prior to Shipment**

In the event Buyer requests that an order for Products which it has placed with Seller be cancelled prior to shipment, and with which request Seller agrees, Buyer shall be liable to Seller for all costs incurred by Seller as a result of such cancellation, including but not limited to, cancellation costs to

suppliers and unreimbursed advances on goods, if any, together with any specifically identifiable incidental and consequential expenses.

**Tool Ownership**

Any and all tooling (including but not limited to tools, dies, patterns and molds) manufactured by or at the request of Seller (excluding Buyer-owned molds), or otherwise utilized by Seller in the production of any Products sold to Buyer, is proprietary to Seller, as is the development, design and use of the same. Ownership interest in said tooling is retained exclusively by Seller. Molds paid for by Buyer shall not be used in the manufacture of another buyer's product.