

Terms and Conditions

- 1. Offer and Acceptance.** A Del Mar Oceanographic, LLC Quotation confirms that Del Mar Oceanographic, LLC ("DMO") will sell goods ("Products"), and/or perform services ("Services"), at the prices and on the terms and conditions specified in the Quotation to the "Customer." Acceptance of any DMO Quotation or proposal referring to these Terms and Conditions, or to which these terms are attached, is limited to acceptance of the exact terms as stated herein and in said Quotation or proposal. "Acceptance" may be effected by Customer by any customary means including issuance of a responsive purchase order or equivalent authorization. Any different or additional terms inserted or proposed by Customer shall be deemed objected to without effect unless subsequently agreed to in writing by DMO. The receipt of these Terms and Conditions by a Customer following an order not in response to, or inconsistent with, a written DMO proposal or quotation, shall be deemed an objection to all inconsistent terms in the order.
- 2. Expiration.** Quotations are valid for 30 days, unless specified on the quote.
- 3. Prices.** The prices in the quotation shall govern Customer's purchase of the Products and Services. Any DMO catalogs or other advertising materials are maintained only as a source of general information, and any prices and/or specifications shown therein do not constitute any offer or quotation by DMO. Customer shall bear all taxes, including excise and/or sales taxes and/or value-added taxes ("Taxes") with respect to the Products or Services that may be imposed by any statute, ordinance or regulation.
- 4. Terms of Payment.** Unless otherwise agreed by DMO in written addendum, payments shall be made within 30 days of DMO's invoice date (NET30) and in the lawful currency of U.S.A., and drawn from a U.S.A. bank (or by wire transfer or irrevocable and confirmed Letter of Credit). Any overdue amounts are subject to a late payment assessment equal to 1.5% of the overdue amount per month. If DMO believes timely payments from Customer will not follow, and/or if the level of cost incurred by DMO for custom work is high, and/or if lead times are long, as determined by DMO in its sole discretion, then DMO may require payment on different terms, including but not limited to prepayment in full. DMO may require partial or full payment ARO (after receipt of order.) DMO reserves the right to invoice for partial shipments.

- 5. Delivery and Risk of Loss.** Terms of Product delivery shall be "Ex Works" at the point of shipment (unless otherwise noted). Customer shall bear all costs and risks of shipment, delivery, insurance, and transportation of the Products. The risk of loss or damage to the Products shall pass to the Customer at the time of shipment. Upon the request of the Customer, DMO may, but is not obligated to, arrange for transport and insurance at the Customer's sole expense. Shipping dates are considered estimates only, and failure to meet said dates shall not be considered a breach by DMO.
- 6. Title and Security.** Title to Products shall pass to Customer upon DMO's delivery to a common carrier at the point of shipment. Until DMO has received full payment for any Products, DMO is entitled to a security interest in the Products which shall upon DMO request, and with the assistance of Customer, be created and remain with DMO. Until the security interest is extinguished, DMO may stop shipment of, repossess and/or resell any Products in question.
- 7. Inspection.** All claims for losses due to loss or damage to products while in transit shall be waived unless made immediately by Customer, but not more than thirty (30) days from arrival.
- 8. Limitation of Liability.** IN NO EVENT SHALL DMO BE LIABLE FOR ANY PENALTY OR ANY DAMAGES TO THE CUSTOMER, ITS CUSTOMERS, AGENTS OR ANY THIRD PARTY WITH RESPECT TO ANY LOSS OF PRODUCTION, LOSS OF USE, LOSS OF OTHER GOODS, LOSS OF ORDERS, LOSS OF PROFITS, SUBSTITUTION COSTS, LOSS OF REVENUES, DOWN-TIME COSTS OR ANY COSTS ASSOCIATED WITH THE FAILURE OF THE PRODUCTS OR SERVICES AND/OR THE REMOVAL OF PRODUCTS FROM SERVICE, OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL, TORT, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES, REGARDLESS OF THE CAUSE OR THE LEGAL THEORY THEREFOR, INCLUDING LATE DELIVERY. DMO'S LIABILITY, IF ANY, IS LIMITED TO THE AMOUNT OF PAYMENT RECEIVED FROM THE CUSTOMER FOR THE PRODUCTS IN QUESTION. This exclusion also includes any liability which may arise out of third party claims against Customer. DMO assumes no obligations or liability of any kind with respect to infringements or alleged infringements of United States or foreign patents, copyrights, trademarks, or other proprietary rights arising out of Customer's purchase, use, or possession of Products.
- 9. Returns.** No Products may be returned, unless authorized by DMO, and DMO shall not be liable for any Products returned without such authorization. Customer shall be responsible for the transportation charges and losses of such Products returned. Any Products wrongfully returned, but accepted by DMO, shall be subject to a restocking charge of thirty percent (30%) of the invoice or purchase order amount plus any transportation costs incurred by DMO. Products built to Customer's specifications and Products that have been modified by the Customer may not be returned under any conditions. Customer shall carefully pack any returned Product in order that same may reach DMO without damage. Products shall be returned only to those locations

stipulated to by DMO at the time that DMO consents to the return of such Products. The shipping container for all returned Products must be adequate to ensure safe delivery of Products to DMO.

10. Default and Cancellation. In the event of Customer's default in payment for Products purchased hereunder, Customer shall be responsible for all reasonable costs and expenses incurred by DMO in collection of any sums owing by Customer (including reasonable attorney's fees), and DMO may decline to make further shipments to Customer without in any way affecting its rights under this contract. If, despite any such breach by Customer, DMO elects to continue to make shipments, such shipments shall not constitute a waiver of any breach by Customer or in any way affect DMO's legal remedies arising from such breach. Customer shall not cancel, terminate, suspend performance of, or issue a hold on, any commitment for the purchase of, or payment for, DMO Products or Services, without prior written consent of DMO. DMO shall be entitled upon any termination or equivalent action to any losses including but not limited to the cost of the Products designed, manufactured and/or shipped; the cost of Services rendered; lost profits; and other incurred costs or expenses. Any termination is subject to a minimum 15% termination charge to be paid by Customer. DMO retains the right to terminate any contract for Services (or any contract for Products to the extent said contract requires specialized services) at its sole discretion, with reimbursement for all reasonable costs and expenses incurred up to point of termination. If Customer becomes bankrupt or insolvent, or files or has filed against it in any petition in bankruptcy, or makes an arrangement for the benefit of its creditors, or suffers a receiver or similar party to be appointed, DMO shall be entitled to cancel this Agreement without judicial intervention or declaration of default of Customer and without prejudice to any right or remedy which shall have accrued or shall thereafter accrue to DMO.

11. Indemnification. Customer shall indemnify, defend and hold DMO harmless from any and all claims (including attorney's fees and court costs) arising out of or connected with any Services, or production or use of any Products designed according to any Customer Specifications and/or Designs, to the extent that said claims result from DMO's use of and/or reliance on said Specifications and/or Designs for said Products and Services.

12. Software License Grant and Limitations. Any Customer of a software Product created by DMO is granted a limited, non-exclusive, and non-sublicensable license to use the Software products to use a single instance of the software Product in connection with a single DMO instrument. DMO retains title to and ownership of and all proprietary rights with respect to such software Products and all copies and portions thereof, whether or not incorporated into or with other software. This License does NOT constitute a sale of the software Products or any portion or copy thereof. Customer acknowledges that the software created by DMO and all accompanying documentation and specifications constitute valuable proprietary, confidential, and trade secret information of DMO. Such software, documentation and specifications may not be copied or sub-licensed, in

whole or in part, provided, transferred, or otherwise disclosed or made available to third parties without the express written consent of DMO. Title and ownership of the software created by DMO shall at all times remain with DMO. Notwithstanding the foregoing, the Products are offered for sale and are sold by DMO subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which DMO can grant licenses covering complete equipment, or any assembly, circuit combination, method or process in which any such Products are used as components. DMO expressly reserves all its rights under such patent claims. DMO may revoke this license upon the breach of any of its terms or upon misuse of the license or the software.

13. Proprietary Rights. All DMO contributions to the Products and Services, the results of the Services, and any other work product designed or provided by DMO hereunder may contain or result in statutory and non-statutory Intellectual Property, including but not limited to patentable subject matter or trade secrets; and all such Intellectual Property remains the sole property of DMO; and Customer shall not disclose (except to the extent inherently necessary during any resale of Product sold hereunder), disassemble, decompile, or otherwise reverse engineer said contributions, or any results of the Services, or any work product, or otherwise attempt to learn the underlying processes, source code, structure, algorithms, or ideas.

14. Compliance with Laws. Unless otherwise specified, Customer is responsible for obtaining any required export or import licenses. Customer will comply with all laws and regulations applicable to the installation, use, or export and import of all Products, including applicable export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Customer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Customer's business activities, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Customer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Customer or for DMO, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Customer's activities.

15. Notices. All notices shall be in writing and sent by registered mail or delivered by hand, or by facsimile to the address of the recipient shown in this Agreement (or any new address of which

written notice has been given under this clause). Notice sent by airmail shall be treated as delivered 5 Working Days after it is posted. Notice delivered by hand or facsimile shall be treated as delivered on the date of delivery or transmission unless that day is not a Working Day, in which case delivery shall be treated as occurring on the next Working Day.

- 16. Modification/Waiver.** These terms incorporate and/or replace all prior terms whether oral or written, and may not be changed by either party except by a writing signed by both parties. The failure by DMO to enforce at any time any of the provisions of this contract, or to exercise any election or option provided herein, shall in no way be construed as a waiver of such provision or option, nor in any way affect the validity of this contract (or any part hereof), or the right of DMO thereafter to enforce each and every such provision. If any provision hereof is held by a court of competent jurisdiction to be unenforceable the remaining terms and provisions shall be unaffected and remain in full force and effect.
- 17. Assignment.** This agreement shall bind and inure to the benefit of DMO'S successors and assigns, including without limitation, any entity into which DMO shall merge or consolidate. Customer may not assign any of Customer's rights or obligations under this agreement without DMO'S prior written consent. Any attempted assignment, delegation, or transfer by Customer without such consent of DMO shall be void.
- 18. Force Majeure.** DMO will exercise reasonable efforts to fill all orders according to the agreed schedule(s); provided, however, that DMO shall not be responsible for any damages or delays caused by acts of God, acts of civil or military authorities, fires, strikes, floods, epidemics, quarantines, restrictions of government, war, riots, transportation delays, obtaining necessary engineering talent, labor, materials or manufacturing facilities, or any other cause beyond its reasonable control. In the event of any such delay, the delivery date shall be extended for such length of time as may be reasonably necessary.
- 19. Governing Law.** This Agreement shall be interpreted and governed according to the laws of the State of California (USA).
- 20. Arbitration.** Any dispute between the Parties regarding the construction, application or performance of any products or services under this Agreement, and any claim arising out of or relating to this Agreement or its breach (including any question of arbitrability), shall be submitted to binding arbitration under the International Centre for Dispute Resolution in accordance with its International Arbitration Rules then in effect. The parties shall appoint one arbitrator to hear and determine the dispute. The place of arbitration shall be San Diego, California, United States of America. The language of the arbitration shall be English. Each party shall bear its own costs, expenses, attorney's fees and an equal share of the arbitrators' and administrative fees through completion of any arbitration. The venue for the arbitration and any post-award proceeding to

confirm, correct or vacate the award shall be San Diego, California, United States of America, and nowhere else. The Parties understand and agree that by agreeing to arbitration, they are waiving any applicable rights to a trial in a court, by a judge or jury.

21. Attorney's Fees. In the event of any arbitration related to or arising out of this Agreement, the prevailing party shall be awarded, in addition to any other damages, its costs and reasonable attorney's fees (including but not limited to all arbitrator and administrative fees) and in the enforcement of any judgment or award rendered.

22. Entire Agreement. This Agreement contains the entire agreement between the Seller and the Buyer and supersedes all previous agreements, correspondence and understandings between them.