



STANDARD TERMS AND CONDITIONS OF SALE

1. Sale And License

1.1 Controlling Conditions of Sale. All purchases and sales of Products, including all parts, kits for assembly, spare parts and components thereof (the "Products") between Buyer and PhaseTech Spectroscopy Inc. ("PhaseTech"), shall be made pursuant to the accompanying PhaseTech purchase order and shall be governed by these Standard Terms and Conditions of Sale ("Terms and Conditions"). These Terms and Conditions and the accompanying PhaseTech purchase order shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and shall supersede all prior or contemporaneous oral or written negotiations, agreements, understanding or representations with respect thereto. These Terms and Conditions shall supersede any conflicting provision contained in any purchase order, quotation, or invoice of Buyer. Unless otherwise agreed in writing, nothing contained in any purchase order, quotation or invoice of Buyer shall in any way modify or add any provision to these Terms and Conditions. These Terms and Conditions may not be amended or any provision hereof waived in any way except by an instrument in writing signed by both parties. IN THE EVENT THAT A PHASETECH QUOTATION IS DEEMED AN OFFER, ACCEPTANCE BY BUYER OF SUCH OFFER IS EXPRESSLY LIMITED TO THE TERMS CONTAINED HEREIN.

1.2 Limited Software License. The software or firmware components and applications, if any, accompanying the Products sold hereunder (the "Software") are licensed and not sold. Subject to these Terms and Conditions and subject to receipt of full payment, PhaseTech hereby grants to Buyer a nonexclusive, royalty free, non-transferable, perpetual license, for its business purposes to use and execute in conjunction with the Product. Buyer receives no rights to the Software except as expressly stated herein.

2. Price; Payment Terms.

2.1 Payment. Unless otherwise specified, terms are net 30 days from the date of the invoice. Freight and handling charges are prepaid and added. All prices are subject to change without notice. Stenographic, clerical and computer errors related thereto are subject to correction.

2.2 Taxes and Charges. Buyer shall pay all insurance, taxes (except for taxes based upon PhaseTech' income), license fees, import, export, and customs fees and duties, tariffs, and other charges related to the Products purchased hereunder. If claiming tax exemption, Buyer must provide PhaseTech with valid tax exemption certificates.

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2.3 Interest Charges. Buyer shall pay PhaseTech the amounts properly listed on the attached invoice. Payments not made within such time period are subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount, or (b) the maximum amount permitted under law. If Buyer believes that an invoice is incorrect and Buyer desires to obtain an adjustment of such invoice, Buyer must provide PhaseTech notice thereof including relevant details within 45 days of the invoice date.

3. Delivery; Title and Risk of Loss.

All Products will be delivered FOB (for domestic shipments) or EXW (for international shipments), PhaseTech designated factory. Upon delivery title to the Products (except for title to any software, which will remain with PhaseTech) will pass from PhaseTech to Buyer, and Buyer will assume all risk of loss or damage, upon delivery of the Products to the carrier, unless otherwise agreed by both parties in writing. In no event will PhaseTech be liable for any delay in delivery (provided that PhaseTech timely delivers the Products to the carrier as provided above), or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of PhaseTech.

Seller will use reasonable commercial efforts to meet any shipment schedule or deadline. All shipment quotations or forecasts are estimates of the time for shipment and Seller disclaims all liability, consequential or otherwise, due to any delivery delay of all or any part of any order for any reason.

4. Changes, Cancellations and Returns.

Buyer may make Changes to the order within thirty (30) days of the scheduled day for delivery. Changes will not be considered effective until a mutual agreement has been reached in writing between PhaseTech and Buyer. Orders may be cancelled or returned only upon PhaseTech's prior written approval, which approval may be granted or withheld in PhaseTech's sole discretion. However, that Buyer shall pay to PhaseTech a charge of 15% of the total amount listed on the invoice, in addition to the amount of all direct and indirect costs incurred by PhaseTech with respect to the order, including without limitation those costs incurred after receipt of any written notice.

5. Product Acceptance.

Buyer shall inspect all Products promptly upon receipt. PhaseTech providing the Product to Buyer will constitute acceptance of that Product, unless PhaseTech receives a written notice of defect or nonconformity

6. Proprietary Rights; Confidentiality.

6.1 PhaseTech Rights.

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PhaseTech retains all right, title and interest in and to the Software, all inventions, ideas, processes, methods, know-how, developed, discovered or conceived by PhaseTech or its employees, including without limitation those developed and/or used in connection with the manufacture of the Products (collectively, the "PhaseTech Rights"). Such rights include, but are not limited to, patent rights, copyrights, trade secret rights, trademark rights, mask work rights and other proprietary rights throughout the world. Sale of the Product does not constitute the transfer of any PhaseTech Rights, nor does it constitute any license to the PhaseTech Rights other than expressly stated herein.

6.2 Proprietary Information. Except for scientific data output by the Products, Buyer agrees that any information obtained from devices, materials, circuits, software and other items provided by PhaseTech in furtherance of these Terms and Conditions shall be considered proprietary information and shall only be disclosed to employees of the Buyer with a need to know to use the Products provided hereunder. Buyer shall not use the proprietary information for any other purpose and shall not disclose or use any proprietary information to the detriment of PhaseTech or to benefit itself unless expressly authorized in writing to do so by PhaseTech. Buyer agrees not to reverse engineer any devices, materials, circuits or other items provided by PhaseTech in furtherance of these Terms and Conditions.

7. Export Regulations.

7.1 Buyer agrees that it shall not sell, transfer, or deliver, directly or indirectly, any part or portion of the Products, Software, or related documentation supplied by PhaseTech pursuant to these Terms and Conditions to any person or organization in any country where such sale, transfer, or delivery by Buyer would be prohibited by law or regulation now or hereafter in effect which imposes any restrictions on United States trade with foreign countries.

7.2 Buyer shall indemnify and save harmless PhaseTech and its affiliated companies from and against any and all damages, liabilities, penalties, fines, costs, and expenses, including attorneys' fees, arising out of claims, suit, allegations or charges of Buyer's failure to comply with the provisions of this Paragraph 7. Any failure of Buyer to comply with the requirements or any breach of the warranty contained in this Paragraph 7 shall be a material breach of these Terms and Conditions.

8 Warranty; Disclaimer.

8.1 PhaseTech warrants its Products will (a) conform to the description of the Products provided in a duly executed purchase order, and (b) the Products will be free from defects in materials and workmanship for a period of twelve (12) months, provided normal use and service of the Products, when properly installed and maintained. For systems that include installation in the purchase

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price, this warranty begins at installation or thirty (30) days from shipment, whichever occurs first. For Products which do not include installation, this warranty begins at date of shipment.

8.2 This warranty applies only to the original End User at the initial installation point in the country of purchase, unless otherwise specified in the sales contract. Warranty is transferable to another location or to another End User only by written agreement with PhaseTech, which will include additional inspection or installation at a new site, if applicable. On-site warranty services are provided only at the installation point. If Products eligible for on-site warranty and installation services are moved from the original installation point, the warranty will remain in effect only if the End User purchases additional inspection or installation services at the new site.

8.3 Work performed under warranty is limited to replacement, refund or repair at PhaseTech's option. On-site warranty services are provided only at the installation point. Parts replaced under warranty will become the property of PhaseTech and must be returned to PhaseTech, or to a facility designated by PhaseTech. The End User will be obligated to issue a purchase order for the value of the replaced parts and PhaseTech will issue credit when the parts are received. Repaired or replaced parts are warranted for the duration of the original warranty period only. Products may only be returned by End User when accompanied by a return material authorization number issued by PhaseTech, with all shipping charges, taxes and duties prepaid by End User. End User bears all risk of loss or damage to the Products until delivery at PhaseTech's designated facility. PhaseTech shall pay for shipment back to End User for Products repaired under warranty. Repairs made or Products or components replaced under warranty are warranted for the remaining unexpired duration of the original Warranty Period for such Products or components. For Products returned for repair that are not covered under warranty, PhaseTech's standard repair charges shall be applicable in addition to all shipping expenses.

8.4 Damage to the Product caused by failure of End User's utilities or the End User's failure to maintain an appropriate operating environment, is solely the responsibility of the End User and is specifically excluded from any warranty, warranty extension, or service agreement. In no event will PhaseTech be responsible for warranty claims later than seven (7) days after the expiration of the warranty.

8.5 PhaseTech may void this warranty for:

- a. Products which are repaired, modified or altered by any party other than PhaseTech or a PhaseTech-approved technician;
- b. Products which are subjected to unauthorized modification, unusual physical, thermal, electrical or optical stress, improper installation, misuse, abuse, tampering, accident, contamination, or negligence in use, storage, transportation or handling;

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- c. any "Warranty Void If Broken" seal located on any Product has been removed, broken or otherwise tampered;
- d. components or accessories with separate warranties manufactured by companies other than PhaseTech;
- e. Product defects resulting from inadequate input laser source as outlined in a duly executed purchase order;
- f. Product defects resulting from improper or inadequate maintenance by End User;
- g. Product defects resulting from improper or inadequate adjustments by End User;
- h. Product defects resulting from improper site preparation and maintenance; and
- i. Product defects resulting from End User-supplied interfacing or parts, such as gratings.

8.6 In order for the warranties contained herein to be valid, End User shall: (i) provide the appropriate input laser source as outlined in a duly executed purchase order; (ii) provide the appropriate utilities and operating environment outlined in a duly executed purchase order; (iii) notify PhaseTech in writing within fourteen (14) days after discovery of a defect or nonconformity of the Product during the Warranty Period; (iv) provide proper and adequate maintenance of the Product as specified in the Product manual; and (v) use the Product as specified in the Product manual.

8.7 For Products sold as kits ("Kit Product") to be assembled by the Buyer, PhaseTech does not provide any warranty. Individual components may be warranted by the original manufacturer. PhaseTech does not warrant or represent that the Buyer will be able to assemble the Kit Product, and disclaims any and all warranties related to any specifications or directions provided by PhaseTech for the assembly of the Kit Products.

8.8 THIS WARRANTY IS EXCLUSIVE, AND PHASETECH MAKES NO FURTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, SOFTWARE OR SERVICES. PHASETECH EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. END USER EXPRESSLY AGREES AND ACKNOWLEDGES THAT USE OF THE PRODUCTS IS AT END USER'S SOLE RISK. END USER FURTHER EXPRESSLY ACKNOWLEDGES THAT THE QUALITY AND ACCURACY OF THE DATA AND SCIENTIFIC CONCLUSIONS RESULTING FROM USE OF THE PRODUCTS IS END USER'S SOLE RESPONSIBILITY. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PHASETECH OR ITS AUTHORIZED REPRESENTATIVES CREATES ANY OTHER WARRANTIES OR IN ANY WAY INCREASES THE SCOPE OF PHASETECH'S OBLIGATIONS UNDER THESE TERMS AND CONDITIONS. REPRESENTATIONS AND WARRANTIES MADE BY ANY PERSON INCLUDING DISTRIBUTORS, DEALERS, AND REPRESENTATIVES OF

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PHASETECH WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THIS SECTION WILL NOT BE BINDING ON PHASETECH UNLESS REDUCED TO WRITING AND APPROVED BY AN OFFICER OF PHASETECH.

8.9 Representations and warranties made by any person including distributors, dealers, and representatives of PhaseTech which are inconsistent or in conflict with the terms of this section will not be binding on PhaseTech unless reduced to writing and approved by an officer of PhaseTech.

9 Indemnification.

Each party shall indemnify and defend the other party at all times after the date of these Terms and Conditions against any and all liabilities, losses, damages (including punitive and consequential damages to third parties), claims, settlement payments, costs and expenses, Litigation Expenses (as defined below), interest, awards, judgments, diminution of value, fines, fees, penalties, and other charges (collectively, "Indemnifiable Damages"), arising out of or relating to a misrepresentation or breach of warranty or covenant contained in herein by the indemnifying party. As used herein, "Litigation Expenses" means any and all court filing fees, court costs, arbitration fees and costs, witness fees, and other fees and costs of investigating, defending, and asserting claims for indemnification under these Terms and Conditions, including, without limitation, attorneys' fees, other professionals' fees, and disbursements. The rights of indemnification provided for in this Section are the parties' sole and exclusive remedies for all claims of damages arising out of or related to these Terms and Conditions; provided, however, nothing in these Terms and Conditions limits any party's right to pursue a remedy based on a claim of fraud.

10 Limitation of Liability and Damages.

NEITHER PARTY NOR ITS VENDORS NOR ITS LICENSORS WILL HAVE ANY LIABILITY TO THE OTHER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THESE TERMS AND CONDITIONS, THE PRODUCT, OR USE OF THE PRODUCT. THE TOTAL LIABILITY OF PHASETECH AND ITS VENDORS AND LICENSORS TO BUYER OR ANY THIRD PARTY ARISING OUT OF THESE TERMS AND CONDITIONS, THE PRODUCT, AND USE OF THE PRODUCT FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES WILL NOT EXCEED THE TOTAL AMOUNT PAID BY BUYER TO PHASETECH.

11 Limitation of Liability and Damages.

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11.1 Severability. If any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of these Terms and Conditions will not be affected or impaired.

11.2 Waiver of Jury Trial. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any suit, action, or other proceeding arising out of or relating to these Terms and Conditions. This waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party acknowledges that it has received OR HAD THE OPPORTUNITY TO RECEIVE the advice of competent counsel.

11.3 Governing Law; Forum. The laws of the State of Wisconsin govern all matters arising out of or relating to these Terms and Conditions, including, without limitation, its interpretation, construction, performance, and enforcement, without giving effect to such State's conflicts of law principles or rules of construction concerning the draftsman hereof. The parties hereby (a) irrevocably and unconditionally submit to the jurisdiction of the federal and state courts located within the geographical boundaries of the United States District Court for the Western District of Wisconsin for the purpose of any suit, action, or other proceeding arising out of or relating to these Terms and Conditions, (b) agree not to commence any suit, action, or other proceeding arising out of or relating to these Terms and Conditions, except in the United States District Court for the Western District of Wisconsin or in any court of the State of Wisconsin sitting in Dane County, Wisconsin, if there is no federal subject matter jurisdiction, and (c) waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action, or proceeding is brought in an inconvenient forum, that the venue of the suit, action, or proceeding is improper or that these Terms and Conditions or the subject matter hereof is not enforceable in or by such court. Each party agrees that the exclusive choice of forum set forth in this Section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

11.4 Remedies. PhaseTech may terminate any order, or to delay shipment thereof, by reason of (a) Buyer's bankruptcy or insolvency, or the pendency of any proceedings against Buyer under any statute for the relief of debtors; (b) Buyer's breach of these Terms and Conditions; (c) PhaseTech becoming aware that the final destination of the Products is other than that set forth in the PhaseTech quote; or (d) failure of Buyer to meet any other reasonable requirements established solely by PhaseTech.

11.5 Entire Agreement. These Terms and Conditions and the agreements, documents, exhibits, and instruments referenced herein constitute the entire and

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final agreement between the parties. They are the complete and exclusive expression of the parties' agreement with respect to the subject matters hereof and thereof. These Terms and Conditions and the agreements, documents, exhibits, and instruments referenced herein supersede all prior negotiations, term sheets, and other agreements, either oral or in writing, between the parties with respect to the subject matters hereof and thereof. The provisions of these Terms and Conditions and the agreements, documents, exhibits, and instruments referenced herein may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into these Terms and Conditions, no party has relied upon any statement, representation, warranty, or agreement of any other party except for those expressly contained in these Terms and Conditions. There are no conditions precedent to the effectiveness of these Terms and Conditions other than those expressly stated in these Terms and Conditions.

11.6 Amendments and Waivers. The parties may not amend, rescind, terminate, or waive these Terms and Conditions or any of its terms, except pursuant to a writing executed by the party or parties against whom enforcement is sought. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under these Terms and Conditions, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a waiver on any future occasion or against any other person. To the extent any course of dealing, act, omission, failure, or delay in exercising any right or remedy under these Terms and Conditions constitutes the election of an inconsistent right or remedy, that election does not either constitute a waiver of any right or remedy or limit or prevent the subsequent enforcement of any contract provision.

11.7 Attorney's Fees. Reasonable attorneys fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of these Terms and Conditions.