

Warranty Terms and Conditions



International Distributor

sky blue
microsystems

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Terms and Conditions

1. DEFINITIONS

- 1.1. "Buyer" or "Purchaser" is defined as the entity or corporation providing the Purchase Order.
- 1.2. "Seller" is defined as KAYA Instruments, Inc. or its subsidiaries.
- 1.3. "Intellectual Property" means all trademarks, copyright and other intellectual property rights.
- 1.4 "Products" means any goods or services, where applicable, supplied to Purchaser by Seller.
- 1.5 "Offer" means any quotation, bid, or proposal for Goods and/or Services made by Seller to Buyer in writing via email, Sales Quotation or Estimate.
- 1.6 "Order" is defined as Buyer's purchase order, contract or similar procurement instrument.
- 1.7 "Sales Order Confirmation" is the documentation detailing the acceptance of the Purchase Order.
- 1.8. "Statement of Work" means the documents that include requirements, details and specifications referring to the Goods and/or Services provided in the Order by the seller.

2. ORDERS

All Orders are subject to acceptance by Seller. Orders will be acknowledged, agreed upon and binding when buyer issues a "Sales Order Confirmation" in writing via e-mail to buyer and/ or electronic communication as detailed in Orders. NRE and Custom Products are non-cancelable and non-returnable ("NCNR"). The Terms and Conditions from Seller supersedes any Terms and Conditions of Buyer. The Buyer has Two (2) business days to review, modify or cancel the order unless the order has shipped. The Terms and Conditions may be altered if agreement has been met in writing by both parties. All Terms and Conditions are superseded by Contract between Buyer and Seller. Conditions not outlined in contract will be enforced by Seller's Terms and Conditions.

3. PRICES

Seller's quotations are valid for 30 days or as otherwise stated in its writing via email or formal quotation. Prices are for Products only and do not include taxes, impositions and any other charges, fees, shipping charges and duties imposed by any government authority. Customer is responsible for any additional fees and taxes.

4. DELIVERIES

Seller will exercise commercially reasonable efforts to perform with respect to a particular Sales Order Confirmation. Delivery dates quoted in Seller's Order Confirmations are estimates only. Orders confirmed by Seller are firm and may neither be rescheduled by Buyer nor cancelled without Seller's prior written consent. Buyer agrees that failure to deliver by an estimated delivery date shall not give the Buyer any right to claim compensation, nor impose any responsibility or liability on Seller. In the event of any default by Buyer, Seller may decline to deliver Products in addition to any other remedy available to Seller. In the event of delivery by installments, default in any delivery shall not invalidate these Terms and Conditions as they pertain to any other deliveries.

5. TERMS OF PAYMENT

Payment of the total invoice amount is due upon sale via check, wire, ACH or credit card unless Net terms are established prior to acceptance of Order. On any past due invoice, KAYA Instruments, Inc. may charge interest from the payment due date to the date of payment (at 1% per month), plus reasonable attorney fees and collection costs. Kaya Instruments may change the terms of Customer's credit at any time.

6. DELIVERY AND TITLE

Transfer of title shall take place upon delivery Ex-Works (Incoterms 2010) at Seller's designated facility unless otherwise specified by Seller. Buyer is responsible for all shipping costs and any applicable surcharges. Title and risk of loss pass to Customer upon delivery of the Products to the carrier. Seller is not liable for delays in delivery. Customer will accept delivery and pay for the Products delivered. Seller reserves the right to make partial shipments unless specified by Order and agreed upon in Sales Order Confirmation. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

7. INTELLECTUAL PROPERTY RIGHTS

The term "Intellectual Property Rights" shall mean (a) all patents, copyrights, computer software, firmware and mechanical designs in each case whether registered or not; (b) all proprietary information, including, without limitation, trade secrets, know-how, manufacturing and production processes and techniques, and research and development information, discoveries, formulas, processes, plans, specifications, software, drawings, illustrations, copyrightable works or ideas or materials (and all documentation related thereto); (c) all registrations and applications for registration for any of the foregoing; and/or (d) all rights under licenses and consents in relation to any of the foregoing. Buyer and Seller and each of their affiliates shall retain any right, title and interest in their respective Intellectual Property Rights developed, invented, created, improved, acquired or obtained (I) prior to the effective date of the Sales Order Confirmation; (II) during the term of the Sales Order Confirmation; (III) pursuant to the Sales Order Confirmation; and (IV) at all times associated with the Goods.

8. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS

Buyer must notify Seller in writing of any non-conformance, shortage, or other discrepancy to Products within Five (5) days after delivery. After the 5th day Customer is deemed to have accepted the Products and may not revoke acceptance. Seller has the option to (1) repair the Products, (2) replace the Products at no cost to Customer; or (3) refund Customer's purchase price. Buyer must return Product(s) to Seller via RMA Process along with acceptable proof of purchase, within 10 days from issuing RMA, freight charges prepaid.

9. WARRANTY

Seller warrants the Products will conform to the manufacturer's specifications. NRE or custom work performed by Seller on Product, Software or Firmware will conform to Customer's specifications. Seller will warranty the product

for one (1) year to be free from manufacturer defects including parts and labor unless product published documentation has different timeline OR in writing by Seller. Warranty does not apply to products that have been modified in design or function, subjected to abuse, misuse, mishandling or unauthorized repair.

If Products do not meet manufacturer's specification. Customer cannot return Products without a return material authorization ("RMA") number. Returned Products must be in the original manufacturer's shipping cartons or equivalent. Customer must return the Product(s), freight prepaid, as specified as per the RMA. If product is past the warranty or exhibits damage to misuse, Seller will evaluate and provide a formal quotation for product repair. Buyer can elect to purchase the repair. Terms and Delivery of repair will be in the formal quotation.

10. LIMITATION OF LIABILITY

KAYA INSTRUMENTS, INC. IS NOT LIABLE FOR AND CUSTOMER IS NOT ENTITLED TO ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; FOR EXAMPLE, LOSS OF PROFITS OR REVENUE, LOSS OF DATA. LOSS OF USE, REWORK, MANUFACTURING EXPENSE, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS. CUSTOMER'S RECOVERY FROM ALL TECH FOR ANY DIRECT DAMAGES WILL NOT EXCEED THE PRICE OF THE PRODUCT AT ISSUE. CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD KAYA INSTRUMENTS, INC. HARMLESS FROM ANY CLAIMS BASED ON; (I) KAYA INSTRUMENTS' COMPLIANCE WITH DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, (II) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN KAYA INSTRUMENTS OR (III) USE IN COMBINATION WITH OTHER PRODUCTS.

11. PRODUCT USE

Products are not authorized for use in life saving equipment, critical safety or other applications where a failure may reasonably be expected to result in catastrophic property damage, personal injury or loss of life. If Buyer utilizes, integrates or sells the products for use in any such applications, Buyer acknowledges that such use or sale is at Buyer's risk. Buyer will indemnify, defend and hold KAYA Instruments, Inc. Harmless from and against any and all liabilities and costs arising out of or in connection with such use or sale.

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