

Scientific Materials Corp. TERMS AND CONDITIONS OF SALE Doc No. 04-FR-004 Rev. C

These terms and conditions, the attendant quotation or acknowledgement, and all documents incorporated by reference therein, bind buyer (Buyer) and FLIR Government Systems Inc., dba Scientific Materials Corp. (Seller) as to the goods and parts sold, and/or services provided (Services), and constitute the entire agreement (Agreement) between Buyer and Seller regarding such sale and/or license.

- 1. PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for ninety (90) days after the date of Seller's quotation.
- 2. DELIVERY AND DOCUMENTATION:** All shipping and/or servicing dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation.
- 3. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
- 4. TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all reasonable documented losses, damages, costs and expenses arising from such termination or suspension.
- 5. CERTIFICATION:** Seller hereby certifies that in the production of the Goods, and/or the performance of the Services, the seller has complied with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards act as amended and regulations and order of the United States Department of Labor issued under Section 14 thereof. Seller acknowledges its obligation under Title VII of the Civil Rights Act of 1964 and under the Equal opportunity Clause in Section 202 thereof; Paragraph 1 through 7 of Executive Order 11246 dated September 24, 1965, as amended and relating to equal employment opportunity; and the implementing rules and regulation of the office of Federal Compliance.
- 6. LIMITED WARRANTY:** Subject to the limitations contained in Section 6, and that the Goods manufactured or Services provided by Seller will be free from defects in material or workmanship under normal use and care until the expiration of the applicable warranty periods, unless supplied on a "Best Efforts" basis. Best Efforts are NOT warranted. Goods are warranted one (1) year from the date of invoice to Buyer unless otherwise stated. Services are warranted for a period of thirty (30) days from the date the Services were provided by Seller. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option and only when provided documentation of non-conformance, promptly repair the Goods, replace the Goods (with Buyer responsible for freight and risk of loss both to and from (Seller), or refund the purchase price of the Goods/Services. All replacements or repairs necessitated by inadequate maintenance, unsuitable power sources, unsuitable environmental conditions, accident, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party. All cost of dismantling, reinstallation and freight under this warranty clause shall be borne by Buyer. Goods/Services corrected, repaired or replaced during the warranty period, or Goods identified as rebuilt (regardless of when purchased) shall be in warranty for the remainder of the original warranty period (if applicable). Seller makes no representation or warranty that the Goods/Services supplied hereunder comply with any local laws or ordinances, and Buyer has the responsibility for compliance with such, including obtaining all permits, licenses, authorizations or certificates required by any regulatory body for installation or use of the Goods or providing of the Services. This limited warranty is the only warranty made by Seller, and THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS OR SERVICES.
- 7. LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 6. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.
- 8. EXPORT/IMPORT CONTROLS:** The Goods are subject to U.S. Government export laws and regulations. Buyer shall not export, re-export, or transfer the Goods or Confidential Information received from Seller without first obtaining the appropriate US Government approvals. Buyer shall not sell, re-exported or deliver these commodities to Cuba, Iran, North Korea, Republic of Sudan, or Syria. Seller will cooperate with Buyer to obtain any export licenses Buyer seeks, but obtaining such licensing shall be the exclusive responsibility of Buyer and Seller makes no representation or warranty regarding the issuance of export licenses for the Goods. Seller has registered with the U.S. Department to State Directorate of Defense Trade Controls and understands its obligation to comply with International Traffic in arms Regulations (ITAR) and the Export Administration regulations (EAR). As appropriate to the Goods, Buyer shall control the disclosure and access to technical data, information and other items received from Seller in accordance with U.S. export control laws and regulations, including but not limited to ITAR.
- 9. PATENTS:** Seller makes no warranty that the Good or Services will not, even when used in their normal manner, in any way infringe any claims of any United States or foreign patents and Seller will not indemnify Buyer or its customers for any claims brought against Buyer or its customers for infringement of any such patents. In any event, Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if infringement is based upon the use, manufacture or sale of Goods or Services in connection with goods or services not manufactured or provided by Seller, or in a manner for which the Goods were not designed by the Seller, or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.
- 10. ACCEPTANCE:** By accepting Buyer's Purchase Order, Seller accepts only those terms and conditions which are required to be included in its subcontract by the terms of the Buyer's prime contractor with the United States government. Seller accepts no terms with respect to adjustment of price, warranty, patent warranty or licenses, limitation of liability or special tooling, unless specifically accepted by Seller in writing.
- 11. TAXES:** Any tax or governmental charge payable by the Seller because of the manufacture, sale or delivery of the Goods, or provision of Services, may at Seller's option be added to the price herein specified. The foregoing shall not apply to taxes based upon Seller's net income.
- 12. TERMS OF PAYMENT:** Buyer agrees to pay Seller's invoice net thirty (30) days from the date of the invoice, in U.S. currency. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further delivery of Goods or providing of Services under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorneys' fees. Seller may request periodic progress payments from Buyer. In such cases, invoices shall be issued by Seller and paid by Buyer based on the following milestones: Milestone 1) 40% of the price upon release by Seller of approved manufacturing documentation or the beginning of the Services; Milestone 2) 60% of the price upon shipment of the Goods or completion of the Services.
- 13. BUYER SUPPLIED DATA:** If Buyer provides Seller in writing with any specifications, data, representations, operating condition information, or other information ("Buyer Supplied Data") which Seller relies on in selecting and/or designing the Goods/Services, any warranties or other provisions contained herein which are affected by such Buyer Supplied Data shall be null and void to the extent that the Buyer Supplied Data is not accurate.
- 14. SHIPPING, RISK AND TITLE:** Notwithstanding any provisions to the contrary in any other documents related to this Agreement, and regardless of how the Goods were quoted by Seller (including, without limitation, any quoted Incoterm): (a) legal title to the Goods and risk of loss related thereto shall transfer to Buyer upon tender of the Goods to a carrier at Seller's factory; (b) Buyer shall be responsible for all freight costs and securing insurance for the Goods; and (c) Buyer shall be responsible for all fees, taxes, duties and other official charges, including without limitation, the cost of carrying out any customs formalities. Buyer is responsible for arranging for a carrier and determining the method of shipment to deliver the Goods, provided, however, if Buyer fails to arrange for a carrier and the method of shipment, Seller shall do so and Buyer shall bear all cost of shipping the Goods.
- 15. GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent; (b) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued; (c) The Agreement is formed and shall be construed, performed and enforced under the laws of the United States of America and the State of Montana. (Exclusive of its choice or conflict of law provisions), and Buyer and Seller agree that the proper and sole venue for all actions arising under the Agreement shall be in the applicable courts in the State of Montana. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to this Agreement; (d) Sections 5, 6, 7, 10, 12, 13 and 14 of this Agreement shall survive expiration, termination or cancellation of this Agreement for any reason; (e) There are no understandings, agreements or representations, express or implied, not specified in the Agreement, and any terms or conditions set forth in any Buyer documents are hereby rejected. Any modification of these terms and conditions (including, without limitation, those set forth in Section 6 Limited Warranty) must be set forth in a written instrument signed by a duly authorized representative of Seller.