



## **TERMS AND CONDITIONS OF SALE**

### **DEFINITIONS**

The following definitions apply to this Agreement: (a) AST: Angstrom Sun Technologies, Inc.; (b) Products: Equipment, parts, accessories and services to be sold by AST to Buyer and listed on the face hereof; (c) Buyer: The person or entity listed on the face hereof who is purchasing the Products and such person's or entity's heirs, executors, administrators, successors by merger or consolidation, or permitted assigns; (d) Collateral: The Products and their proceeds, together with any additions, accessions, increases, substitutions and replacements which are subject to AST' security interest pursuant to this Agreement.

### **ORDER OF PRECEDENCE**

The terms and conditions contained herein constitute the entire agreement between the parties and are the only basis upon which AST offers to sell goods to Buyer, unless otherwise agreed to in writing by AST. Buyer's terms and conditions are hereby rejected and shall be of no effect to the extent that they are inconsistent with or in addition to these terms and conditions. Notwithstanding anything to the contrary in Buyer's purchase order, acceptance by Buyer of the Products or any portion thereof shall be deemed to constitute Buyers acceptance of all of AST terms and conditions set forth herein.

### **PRICE**

Unless otherwise indicated on the face hereof, prices shown (a) do not include any additional fittings or adjustments, and (b) are net prices, Ex Works(EXW), in Acton, Massachusetts or such other shipping point as designated by AST, exclusive of delivery and installation charges and taxes. Buyer shall pay all delivery charges including, without limitation, rigging and transportation charges, the cost of any transit insurance and the cost of installation. The delivery charged on each order will reflect the weight, size and destination of the Products. Any tax, fee, levy, assessment, exaction, imposition or other charge imposed by any local, state, or federal government now or hereafter levied upon the production, sale, use, import, export, ownership or shipment of the Products, shall be paid for by Buyer, except for taxes based on AST' net income.

### **PAYMENT AND CREDIT TERMS**

Terms are net thirty (30) days from date of each invoice subject to Buyer maintaining credit arrangements satisfactory to AST. Otherwise, terms are payment with order or specified with quotation. AST reserves the right to remove credit terms extended to Buyer in the event (a) Buyer fails to pay for Products when due, or (b) in the sole judgment of AST there has been a material adverse change in Buyer's financial condition. In either such event, AST shall have the right to demand immediate payment or other assurances which it deems adequate before shipment of any other Products. Payment may also be made by credit/debit card (American Express, VISA, and MasterCard) via Paypal Service. Failure to make any payment when it is due shall cause the entire amount of Buyers unpaid debt to become immediately due and payable at the option of AST. In addition to any other rights of AST, AST may, upon default of the Buyer in payment, apply a service charge at the minimum rate of one and one half percent (1½ %) per month on the unpaid balance. Buyer shall pay, on demand, any agency or attorney fees, court costs and other disbursements incurred by AST in the collection of delinquent payments.

### **INSOLVENCY**

Except as may otherwise be prohibited by law, in the event that Buyer becomes insolvent or unable to pay its debts as they become due, or in the event of any voluntary or involuntary bankruptcy proceedings by or against Buyer, or appointment of a receiver of Buyer or assignment by Buyer for the benefit of its creditors, AST may elect to cancel any of its obligations hereunder, and all obligations of Buyer to AST, whether arising out of this Agreement or otherwise, shall immediately become due and payable in full.

### **SECURITY INTEREST; INSURANCE**

This is a security agreement to secure payment of the purchase price of the Products. Buyer hereby grants AST a security interest in the Collateral for the full amount of the purchase price as security for Buyers obligations hereunder. Buyer hereby authorizes AST to execute any document required to perfect this security interest. Payment in full of the purchase price of the Products shall release the security interest. At Buyers expense, the Collateral shall be insured by Buyer in favor of AST against loss or damage from fire or other casualty. Buyer shall be in default under this Agreement and AST shall be entitled to enforce all of its rights and remedies, including all rights and remedies of a secured party



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under the Uniform Commercial Code, if (a) Buyer fails to insure the Collateral in favor of AST as required by this security agreement or (b) Buyer, without AST's prior written consent, sells, leases, disposes of or permits the Collateral to be encumbered in any way or (c) Buyer fails to maintain the Collateral in good order or repair or (d) Buyer fails to pay AST the purchase price for the Collateral when due.

### SHIPMENTS AND DELAYS

All risk of loss of or damage to the Products is assumed by Buyer after AST has made delivery of the Products to the carrier for shipment to Buyer and all claims for damage should be made directly to the carrier. Delivery dates quoted or acknowledged by AST are not an agreement as to delivery by a specific date but, rather, are an estimate of the delivery date. AST shall use reasonable efforts to meet stated delivery dates. However, AST shall not be liable for any delay in delivery of Products due to causes beyond the reasonable control of AST.

### INSPECTION, ACCEPTANCE AND RETURNS

Shipments should be thoroughly inspected by Buyer upon receipt. Failure to reject any delivery upon receipt shall constitute acceptance of that delivery and shall be deemed a waiver of any other right to reject or revoke acceptance. All claims arising from over, short, defective or damaged goods must be made within ten (10) days of receipt and should reference the original purchase order. No Product shall be returned to AST until after approval by AST and receipt of shipping instructions from AST. AST may at its discretion require payment of an administration charge as a condition to authorizing a return. **CREDIT CANNOT BE ALLOWED FOR MERCHANDISE RETURNED WITHOUT PRIOR WRITTEN AUTHORIZATION.** All original containers and packing materials must be returned with a shipment to insure proper credit. Credit and/or replacement will be given against Buyer's account. Buyer shall be deemed to have accepted the Products upon the earlier of (a) delivery to Buyer, if installation by AST is not included in the purchase price; (b) certification by AST in such form as AST shall prescribe that the Products have been installed and meet AST' specifications, if installation by AST is included in the purchase price; (c) utilization of the Products or any portion thereof by Buyer for any purpose.

### FORCE MAJEURE

AST shall not be liable to Buyer for any delay or failure by AST to perform its obligations hereunder when such delay or failure is directly or indirectly due to accident (in manufacture or otherwise), fire, flood, seizure, riot, war, embargo, labor shortages or difficulties, inadequate transportation facilities, shortage of material or supplies, delay or default on the part of AST' suppliers, regulation or order by government authority, or any other casualty or cause beyond the control of AST. AST may, at its option, cancel this Agreement or delay performance hereunder for any period reasonably necessary due to any of the foregoing, during which time this Agreement shall remain in full force and effect. AST shall have the further right to allocate its available materials and products between its own uses and its customers in such manner as AST may consider fair and reasonable. AST shall have the right to make partial shipments to Buyer and invoice accordingly, and Buyer shall be obligated to pay for such partial shipments when invoiced.

### LIMITED WARRANTIES

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH BELOW, AST MAKES NO, AND DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING ANY PRODUCT OR SERVICE, OR CONCERNING ANY PATENTS OR TECHNOLOGY USED OR INCLUDED IN ANY PRODUCT OR SERVICE. ALL GUARANTEES, WARRANTIES, CONDITIONS AND REPRESENTATIONS WHATSOEVER, EITHER EXPRESS OR IMPLIED, WHETHER ARISING UNDER ANY STATUTE, LAW, COMMERCIAL USAGE OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

If Products are purchased by a US buyer but used outside the US, local warranty support cannot be guaranteed. Please notify your AST representative should the equipment be intended for use outside the US.

Representations and warranties made by any person, including dealers and representatives of AST, which are inconsistent or in conflict with the terms of this warranty, shall not be binding upon AST unless reduced to writing and approved by an expressly authorized officer of AST. This warranty is non-assignable and may be enforced only by Buyer. AST gives no warranty whatsoever with respect to parts with a limited technical lifetime, such as data disks and cassettes. Components of Products produced by other manufacturers are warranted by AST only the extent that such components are warranted by the manufacturers supplying such components to AST and to the extent that such warranties may be assigned by AST to Buyer.

For full details of the limited warranty, please refer to specific document, titled as "Terms and Conditions of Warranty",



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which is issued by AST.

### **SOFTWARE OWNERSHIP**

Buyer acknowledges and agrees that AST or, in applicable instances, AST' licensors, retain the entire right, title, and interest in and to the intellectual property (including, without limitation, all copyrights) related to any item of software and related documentation which AST provides to Buyer. Buyer shall not have, or grant others, a right to (a) decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of any such software; or (b) remove, obscure, or alter any copyright, trade, secret, trademark, patent, or other proprietary rights notice affixed to or displayed on any such software or related documentation, or affixed to or printed on any of AST factory packaging.

### **PATENT INDEMNITY**

AST shall defend or settle any claim made, or any suit or proceeding brought, against Buyer which is based on an allegation that any Products infringe a third-party patent, provided that AST is timely notified of any such claim, suit or proceeding and is given, by Buyer, all necessary information, cooperation, and the sole authority to defend or settle the same at AST' expense. In the event that the Products are, in such suit or proceeding, held to infringe any patent and the use of such Products is enjoined, or in the case of a settlement of such suit or proceeding, AST shall have the option, at its own expense, (a) to procure for Buyer the right to continue the use of the Products, or (b) to modify the same so that the Products become non-infringing, or (c) refund the depreciated value of the Products and accept return thereof. AST shall have no liability for claim of infringement resulting from compliance by AST with Buyer's designs, specifications or instructions, or in the event of modification of the Products by Buyer, or use by Buyer of the Products other than as specified in AST' publications, or use by Buyer of the Products together with products not supplied by AST. In no event shall AST have any liability for any infringement in excess of the purchase price of the infringing Products.

### **DELAY; CANCELLATION**

If Buyer requires AST to delay delivery, payment for the Products and the Buyer's required inspection shall not thereby be postponed or extended. Products held for Buyer shall be at the risk and expense of Buyer. AST reserves the right to make a charge for such Products held for Buyer. In the event of cancellation by Buyer of its purchase order after acceptance, AST shall be entitled to damages for cancellation up to the purchase order price plus attorneys' fees, court costs and other disbursements expended in the collection of such amounts and interest from the date of cancellation at the rate set for delayed payments.

### **CHOICE OF LAW AND JURISDICTION; COURTS**

This transaction is deemed to have been made in Massachusetts and shall be construed in accordance with the laws of the State of Massachusetts, applicable to contracts made and to be performed wholly within the State of Massachusetts. All controversies, disputes and claims arising out of relating to this transaction, or the breach thereof, shall be adjudicated by a court of competent jurisdiction within the County of Middlesex, State of Massachusetts or the Federal District Court in the District of Massachusetts, except that any judgment obtained in such action may be enforced in other jurisdictions. Buyer hereby waives personal service of process provided that process is served by certified, registered mail. Buyer hereby waives any objection that it may have regarding the personal jurisdiction or venue of any of the aforesaid courts, as well as any claim that the forum or venue is inconvenient or should be transferred. Buyer agrees to pay any and all reasonable costs, legal fees, and expenses incurred by AST resulting from all controversies, disputes or claims which are adjudicated or settled favorably to AST.

### **EXPORT OF AST PRODUCTS**

The export from the United States of certain Products and technology to certain countries is specifically prohibited by the Export Administration Act of 1979, as amended. The export of all Products and technology must be in accordance with the applicable provisions of the United States Export Administration Regulations and the Export Regulations of the United States Department of Defense.

### **NOTICES**

All notices, consents, requests, instructions, approvals and other communications hereunder shall be in writing and given by personal delivery, or by certified mail, return receipt requested, or by overnight delivery service to the address of Buyer or AST as shown on the face hereof or to such other address as any party hereto may, from time to time, designate in writing. Notices shall be deemed to be effective on the date personally delivered, or three (3) days after deposited in the United States mail as certified mail, or one day after deposited with an overnight delivery service, as the case may be.



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### **NO WAIVER**

Failure or delay by AST in seeking enforcement of any term or condition hereof at one time shall not constitute a waiver of the right to enforce such term or condition in the future, nor of AST' right to enforce any other term or condition hereof.

### **SEVERABILITY OF PROVISIONS**

In the event that any one or more of the provisions contained in this Agreement are determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

### **ASSIGNMENT**

No assignment of rights or transfer of obligations under this Agreement shall be made by AST or Buyer without the prior written consent of the other party, provided, however, that AST may, without the consent of Buyer, assign its rights and transfer its obligations under this Agreement to any corporation which is a parent, subsidiary or affiliate of AST.

### **QUOTATIONS**

Any quotation issued by AST shall not constitute an offer by AST to sell the Products to Buyer, and AST reserves the right to withdraw or modify any quotation issued by it at any time without notice to Buyer. Such quotation shall constitute an invitation to Buyer to submit a purchase order to AST, which purchase order may be accepted or rejected by AST.