

# STANDARD TERMS AND CONDITIONS OF SALE

## 1. GENERAL

The terms and conditions of sale contained herein shall apply to all quotations and offers made by and purchase orders accepted by **BrightSky**. These terms and conditions may, in some instances, conflict with some of the terms and conditions affixed to the purchase order or the procurement document issued by the Buyer. In such case, the terms and conditions contained herein shall govern and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions contained herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of goods ordered hereunder. **BrightSky's** failure to object to provisions contained in any communication from the Buyer shall not be deemed a waiver of the provisions herein. Any changes in the terms and conditions of sale contained herein must be specifically agreed to in writing, signed by a corporate officer of **BrightSky**, before becoming binding on either party. All orders, offers and contracts must be approved and accepted by **BrightSky** at its corporate office in Naples, Florida.

## 2. PRICING

Prices quoted are subject to modification and withdrawal without notice. All billings for products and services will be at the price indicated in **BrightSky's** acceptance. In the event that the acceptance price is different than the price originally quoted Buyer, the Buyer may, within five (5) days of the date of the acceptance notice, cancel this order by written notice to **BrightSky** without liability. Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of federal, state and local excise, sales and similar taxes. Such taxes, when applicable, will appear as additional items on invoices. If exemption from such taxes is claimed by Buyer, the Buyer must provide a certificate of exemption at the time of the purchase order.

## 3. TERMS OF PAYMENT

Terms of payment are Net Thirty (30) days from date of invoice subject to the approval of **BrightSky's** credit department at the time of the shipment. **BrightSky** reserves the right to require payment in advance or C.O.D. and otherwise to modify credit terms based on the financial condition of the Buyer and any other reason.

## 4. TITLE AND DELIVERY

Unless otherwise agreed upon by **BrightSky**, all sales are made F.O.B. point of shipment. **BrightSky's** title passes to Buyer and **BrightSky's** liability to deliver ceases upon making delivery of material purchased hereunder to carrier at shipping point in good condition; the carrier acting as Buyer's agent. All claims for damages must be filed with the carrier. In the absence of specific instructions, **BrightSky** will select the carriers. Claims against **BrightSky** for shortages must be made within ten (10) days after arrival of shipment. **BrightSky** assumes no responsibility for delay, breakage or damage after having made delivery in good order to the carrier.

## 5. ACCEPTANCE

The Buyer shall accept or reject products within thirty (30) days of receipt of each shipment. Failure to notify **BrightSky** in writing of nonconforming products within such period shall be deemed an unqualified notice.

## 6. WARRANTY

**BrightSky LLC** warrants that the products covered hereby shall be free from defects in materials and workmanship, and shall perform to **BrightSky's** published specifications or other specifications accepted in writing by **BrightSky** at the time of delivery to Buyer and for a period of ninety (90) days thereafter. The foregoing warranty does not apply to any products which have been subject to misuse (including static discharge), neglect, accident or modification or which have been soldered or altered during assembly and are not capable of being tested by **BrightSky** under its normal test conditions. **BrightSky** shall make the final determination as to the existence or cause of any alleged defect. **BrightSky's** sole obligation to Buyer hereunder for products failing to meet the aforesaid warranty shall be, at **BrightSky's** discretion, to replace the nonconforming product or issue Buyer credit for the purchase price of the nonconforming product where: 1) **BrightSky** has received written notice of any nonconformity; and 2) after **BrightSky's** written authorization to do so Buyer has returned the nonconforming product to **BrightSky**, freight prepaid, and 3) **BrightSky** has determined that the product is nonconforming and that such nonconformity is not a result of improper installation, repair, test or other misuse by Buyer. In no case are products to be returned to **BrightSky** without first obtaining authorization and a customer return order number from **BrightSky**.

None of **BrightSky LLC's** products may be used in a life support application (see Section 18).

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BRIGHTSKY NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF ITS PRODUCTS, AND BRIGHTSKY MAKES NO WARRANTY WHATSOEVER FOR PRODUCTS NOT MANUFACTURED BY OR FOR BRIGHTSKY. BRIGHTSKY SHALL NOT BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING FROM CONTRACT, TORT OR NEGLIGENCE, INCLUDING BUT NOT LIMITED TO, LOSS OF GOODWILL, OVERHEAD OR OTHER LIKE DAMAGES.

## 7. PATENT CLAUSE

Buyer shall indemnify, defend and hold **BrightSky** harmless against any expense, damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, trademarks, copyrights, trade secrets, or for unfair competition arising from compliance with Buyer's designs or specifications or instructions. **BrightSky** shall not be liable for any costs or damages incurred by Buyer as a result of any suit or proceeding brought against the Buyer and Buyer will indemnify, defend and hold **BrightSky** harmless from any expenses, damages, costs or losses resulting from any suit or proceeding brought against **BrightSky**, either severally, or jointly with Buyer, so far as such suit or proceeding is based on claims that the use of any product or any part thereof, furnished hereunder, in combination with products not supplied by **BrightSky** constitute either direct or contributory infringement of any patent, or copyright of the United States. Sales of products or any parts thereof, hereunder confers on the Buyer no license under any patent rights of **BrightSky** covering or relating to (a) the structure of any devices to which the products or parts may be applied, or (b) a process or machine in connection with which they may be used.

## 8. TOOLING

Unless expressly provided in writing, **BrightSky** shall retain title to and possession of any tools, masks, dies and fixtures made for, or obtained for this order.

## 9. CONTINGENCIES

All shipping dates and quantities are approximate. **BrightSky** will use its best efforts to fill all

orders according to the agreed schedule and quantity. **BrightSky** shall not be responsible for any failure to perform due to unforeseen circumstances or causes beyond **BrightSky's** control. Examples of such causes are acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, shortages of transportation facilities, fuel, labor or materials or for any other causes beyond **BrightSky's** reasonable control. In the event of any delay caused by such contingency, the date of delivery shall, at the discretion of **BrightSky**, be deferred for a period equal to the time of loss by reason of the delay. In the event **BrightSky's** production is curtailed for any of the above reasons so that **BrightSky** cannot deliver the full amount released hereunder, **BrightSky** may allocate production deliveries to the various buyers then under contract for similar goods. The allocations will be made in a commercially fair and reasonable manner. When allocation has been made, Buyer will be notified of the estimated quota made available.

## 10. CANCELLATION FOR CONVENIENCE

Buyer may cancel any order for convenience on the following terms: a) for standard products, any cancellation or reschedule will be accepted only with specific approval of **BrightSky's** Customer Service Department and may be subject to special charges; b) for non-standard products, Buyer shall accept delivery of all such products completed at the time of cancellation. Non-standard products which are rescheduled by the buyer will be deemed cancelled as to those products scheduled for delivery in the sixteen (16) weeks time period following rescheduling and cancellation charges shall apply. Non-standard products which are in the work-in-progress inventory shall be paid for by the buyer at a price based on the percentage of completion of such inventory applied to the price of the finished product. Buyer shall also promptly pay to **BrightSky**: (i) costs of settling and paying claims arising out of the termination of work under **BrightSky's** subcontracts or vendors; (ii) reasonable costs of settlement, including engineering, development, accounting, legal and clerical costs; and (iii) twenty percent (20%) of the purchase price of the order cancelled. Standard products with minimum usage may be subject to cancellation charges as per non-standard parts, as determined by **BrightSky** in its sole discretion.

## 11. CANCELLATION FOR DEFAULT

Any order may be cancelled in whole or in part, on written notice by Buyer because of **BrightSky's** failure to deliver product in accordance with the terms hereof, which failure is not excused pursuant to Section 10. Cancellation by Buyer for default, which may entitle Buyer to procurement costs hereunder, shall be effective only upon **BrightSky's** failure to correct such default within a reasonable time period following notice specifying such default. **BrightSky** shall not be liable for incidental or consequential damages, including but not limited to, the cost of labor, requalification, delay, loss of profits or goodwill, if **BrightSky** fails to meet specified delivery dates.

## 12. CANCELLATION FOR INSOLVENCY

**BrightSky** shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statutes, or becomes unable to meet its financial obligations in the normal course of business.

## 13. LIMITATION OF LIABILITY

BRIGHTSKY'S LIABILITY UNDER OR FOR BREACH OF THIS AGREEMENT SHALL BE LIMITED TO REFUND OF THE PURCHASE PRICE. IN NO EVENT SHALL BRIGHTSKY BE LIABLE FOR COSTS FOR PROCUREMENT OF SUBSTITUTE GOODS, LOSS OF PROFITS, OR FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, REPUDIATION OF CONTRACTS, NEGLIGENCE OR OTHERWISE.

## 14. CONTROLLING LAW

The terms and conditions herein shall be governed by and construed under the laws of the State of Florida.

## 15. SUBSTITUTION AND MODIFICATIONS

**BrightSky** reserves the right to modify the specifications of components offered by **BrightSky** providing that, in **BrightSky's** opinion, the modification will not materially affect the performance.

## 16. CONSEQUENTIAL DAMAGE

In no event shall any claim for consequential damages be made by either party.

## 17. SECURITY

Buyer hereby grants **BrightSky** a security interest in the products and proceeds therefrom as security for payment of the purchase price.

## 18. LIFE-SUPPORT POLICY

BRIGHTSKY'S PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE PRESIDENT OF BRIGHTSKY LLC. As used herein:

- Life-support devices or systems are devices or systems which (1) are intended for surgical implantation into the body, or (2) support or sustain life and whose failure to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a significant injury to the user.
- A critical component is any component in a life-support device or system whose failure to perform can be reasonably expected to cause the failure of the life-support device or to affect its safety and effectiveness.

## 19. GENERAL

- The prevailing party in any legal action brought by one party against the other shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses incurred thereby, including court costs and reasonable attorney's fees.
- Buyer agrees to comply with all applicable laws and regulations. Buyer understands that **BrightSky** is subject to regulation by agencies of the US Government, including the Department of Commerce, which may prohibit export or diversion of **BrightSky's** products to certain countries, and agrees that it will not knowingly assist or participate in any such diversion or other violation of applicable US laws and regulations. Buyer warrants that it shall not sell any products in countries or to users not approved to receive classified technical equipment under applicable US laws and regulations, or that Buyer otherwise has knowledge of such laws and regulations, and that will abide by them. Buyer shall indemnify and hold harmless **BrightSky** for any damages resulting to **BrightSky** from a breach of this paragraph by Buyer.
- Each shipment made hereunder shall be considered a separate transaction. In the event of any default by the Buyer, **BrightSky** may decline to make further shipments. If **BrightSky** elects to continue shipments, such action shall not constitute a waiver of any default by Buyer or in any way affect **BrightSky's** legal remedies for such a default.