



TERMS AND CONDITIONS OF SALE

The sales quote and/or sales order (the "Order"), together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Agreement"), constitutes the entire and exclusive agreement between Dynatech International LLC ("Seller") and the buyer identified in the Order, hereinafter referred to as "Buyer", regarding the sale of goods, materials and/or services hereunder ("Goods").

1. ACCEPTANCE – All Seller proposals are conditioned upon Buyer acceptance of these terms and conditions, unless otherwise expressly agreed in writing by Seller and Buyer. Any Buyer terms and conditions on the purchase order are deemed excluded. Seller acknowledgment of receipt of a purchase order does not constitute acceptance by Seller. Seller acceptance of a purchase order is subject exclusively to Buyer's acceptance of this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of Order (or any other document that the parties may execute), the terms and conditions of this Agreement prevail unless the conflicting term in the Order expressly states that it is modifying the terms and conditions of this Agreement for that particular Order.

2. PRICE – Seller reserves the right to revise prices for Goods if there is a change in quantity, size, condition and/or time of shipment differing from those provided in original Order.

3. CHANGES – Buyer may not cancel or change Agreement without the written consent of Seller. If Buyer desires to cancel or change Order, Buyer must deliver a written request for cancellation of Order to Seller's office. If Seller consents to Buyer's written request for cancellation of Order, Buyer shall pay to Seller the percentage of the total Order price which equals the percentage of Order completed by Seller at the time of cancellation.

4. SECURITY INTEREST – Buyer hereby grants to Seller a security interest in the Goods sold hereunder together with all proceeds thereof until Buyer has completed payment of the purchase price in full, plus accrued interest if any, and fully performed all of the other terms and conditions hereof, at which time Seller's security interest is satisfied. Buyer agrees to execute such documents to evidence and perfect said security interest as Seller may require.

5. INVOICE/PAYMENT – Buyer shall make payment to Seller in a manner set forth in Order. Payment must be made in U.S. currency unless agreed otherwise in writing. If Buyer is delinquent in payment to Seller, Seller may immediately stop shipment of Goods and future shipments until all delinquent amounts and interest on late payments is paid. Additionally, Seller may at its option: (a) repossess Goods for which payment has not been made; (b) charge interest on delinquent amounts at the lower of one and one-half percent (1.5%) per month or partial month during which amount was due, or the highest rate allowed by law, from due date to payment date; and (c) recover all costs of collection, including without limitation reasonable attorneys' fees. Seller may re-evaluate Buyer's credit standing at all times, and modify or withdraw credit.

6. WARRANTY – All Goods sold by Seller to be free from defects in material, workmanship and title for a period of one (1) year from date of Seller's invoice, on condition that any non-conformance be reported to Seller within thirty (30) days of invoice date. SELLER MAKES NO WARRANTY THAT THE GOODS WILL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY EXPRESSED OR IMPLIED REGARDING THE GOODS EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN.

7. EXCLUSIVE REMEDIES – If the Goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such Goods which are returned by Buyer during the applicable warranty period set forth above, provided that (a) Seller is promptly notified in writing upon discovery by Buyer that such

Goods failed to conform to this contract with a detailed explanation of any alleged deficiencies, (b) such Goods are returned in same condition as originally shipped, to Seller F.O.B. Seller's plant, and (c) Seller's examination of such Goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If Seller elects to repair or replace such Goods, Seller shall have a reasonable time to make such repairs or replace such Goods.

8. TITLE AND RISK OF LOSS – Unless otherwise specified in Order, title and risk of loss shall pass to Buyer upon delivery of the Goods to the transportation company at the F.O.B. point.

9. INSPECTION AND ACCEPTANCE – Inspection or rightful rejection of the Goods must be made within thirty (30) days after Buyer's receipt of the Goods. Buyer must notify Seller within such thirty (30) days of any claims for nonconforming or defective Goods so delivered and hold such Goods pending Seller's inspection. Seller shall have the right and option to repair or replace any nonconforming Goods. The Goods may not be returned to Seller without first obtaining Seller's consent. The request for return and credit must be filed with Seller and shall include purchase order number, approximate date shipped and any and all other identifying numbers (such as invoice number, date of invoice, etc.). Each request for return of Goods for credit should state the type and quantity of Goods, the part numbers and the reasons for the return. When appropriate, Seller will then issue a Return Material Authorization (RMA) number to Buyer. Seller will not accept any returns without having first issued an RMA number. An RMA number must be clearly written on any package authorized for return with a written explanation of the reason for rejection. If return authorization is granted, Buyer shall preserve, pack, package and handle the Goods so as to protect the Goods from loss, damage, deterioration, moisture, foreign matter or contamination. Buyer shall comply with best commercial practices to ensure arrival at destination at the lowest transportation cost, in the absence of any specifications Seller may provide. ESD sensitive components or assemblies must be packaged in approved protective packages and labeled with the ESD caution symbol. If Buyer returns Goods in accordance with the procedures described above and Seller subsequently determines that such Goods are not defective or are not covered by warranty, then Seller may charge Buyer a twenty percent (20%) restocking charge and the Buyer shall be responsible for all delivery costs. Risk of loss or damage to any Goods returned to Seller for adjustment shall remain with Buyer until they are received by Seller. Shipping charges for returned Goods will be paid by Seller only for Goods repaired or replaced pursuant to warranty. Otherwise, such charge will be Buyer's responsibility.

10. TERMINATION – This Agreement shall remain in effect until terminated as provided herein and any Order shall remain in effect for the term specified in such Order unless terminated earlier as provided in this Agreement. Either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party, provided that upon such termination, the obligations of the parties shall remain in full force and effect and those provisions in the Agreement which survive termination will remain in full force and effect. Seller may also immediately, upon written notice to Buyer, terminate the Agreement if Buyer (i) becomes insolvent, (ii) files or has filed against it and not dismissed within 60 days, a proceeding under any federal or state insolvency, bankruptcy or other law for the relief of creditors (iii) ceases or admits in writing its intention to cease the operation of its business in the ordinary course or (iv) breaches any material provisions of the Agreement.

11. FORCE MAJEURE – Delivery dates are approximate. Seller will not be liable for delays in filling this Order or failure in the performance of any of its obligations if such delay or failure results from, without limitation, actions or decrees of governmental bodies, strikes, wars, fires, floods, earthquakes, acts of terror or any other acts of God which are beyond the reasonable control of Seller. In such case, the period



for Seller's performance shall be automatically extended for the same time that Seller was delayed. In addition, if any part of Seller's performance shall become commercially impracticable, Seller shall be excused from further performance of the Agreement, or, at Seller's option, so much of it as is affected by such commercial impracticability. For purposes of the Agreement, Seller's performance is commercially impracticable if it would require Seller to incur excessive or unreasonable expenses, whether or not such expenses are a result of a force majeure condition, and whether or not such expenses result from the occurrence or nonoccurrence of events or circumstances that could or should have been foreseen by Seller.

12. PROPRIETARY INFORMATION – Buyer, its employees, agents and representatives, shall consider as Seller's "Confidential Information," all non-public information provided by Seller, all specifications or other documents prepared by Seller in connection herewith, the fact that Seller has contracted to sell Goods, and all other non-public information relating to this Agreement. Without Seller's prior written consent, Buyer shall not disclose or use Confidential Information for any purpose other than performing this Agreement. The foregoing provisions shall be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality, non-disclosure and/or publicity.

13. INDEMNIFICATION – Buyer, its parents and affiliates shall indemnify, defend and hold harmless Seller, and its directors, employees, agents, shareholders, affiliated companies and their respective successors and assigns from and against any and all claims or liability (other than liability solely due to the willful misconduct of Seller), including reasonable attorneys' fees, relating to, in connection with or arising from: (a) any breach by Buyer of any provisions of Agreement; (b) any patent, trademark or copyright infringement claim resulting from compliance with any specifications or designs provided by Buyer to Seller; (c) any unauthorized modification, alteration, adaptation or use of the Goods; and (d) any claim or suit for damages arising from acts, representations or omissions of Buyer, its agents, employees or subcontractors related to Buyer's sale of the Goods, use of the Goods or incorporation of the Goods into a product or part thereof. Buyer's obligation to indemnify Seller shall survive the expiration or termination of the Agreement by either party for any reason.

14. EXPORT CONTROL – The sale, resale or other disposition of Goods and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Goods to any country or person to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export, transfer, or import as may be required. Seller reserves the right not to ship Goods ordered if, at any time, Seller believes that such shipment may violate U.S. export control laws. Buyer shall indemnify and hold Seller harmless from and against any liability claims, demands or expense (including attorney's fees) arising from or relating to Buyer's noncompliance with this Agreement.

15. GOVERNING LAW – This Agreement and the rights of the parties hereunder is governed by and construed under the laws of the State of New York.

16. LIMITATION ON LIABILITY/STATUTE OF LIMITATIONS – IN NO EVENT WILL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, REVENUES OR USE, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. THE AGGREGATE LIABILITY OF SELLER FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THE ORDER WILL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS OR UNIT THEREOF GIVING RISE TO THE CLAIM. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE

LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE. BUYER MUST COMMENCE ANY ACTION AGAINST SELLER ARISING FROM THIS ORDER WITHIN ONE YEAR FROM DATE THE CAUSE OF ACTION ACCRUES.

17. ASSIGNMENT – Buyer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement or delegate any of its duties under this Agreement to any third party without Seller's prior written consent. Any assignment without Seller's written approval will be void at the option of the Seller.

18. SEVERABILITY – If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible and the remaining provisions will continue in full force and effect.

19. WAIVER – No course of dealings between Seller and Buyer or Seller's failure to insist on performance of any term or condition contained in this Agreement, or failure to exercise any of the Seller's rights hereunder, shall constitute a waiver of any of the Seller's rights or remedies under this Agreement.

20. ENTIRE AGREEMENT – This Agreement contains the entire agreement of the parties relating to the sale of Goods, regardless of any inconsistent or additional terms in any other document, and supersedes all previous understandings, negotiations and proposals and may not be amended or discharged except in writing approved by both parties.

21. RELATIONSHIP OF PARTIES - Buyer's relationship with Seller will be that of an independent contractor. Buyer will not have, and will not represent that it has, any power, right or authority to bind Seller, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Seller or in Seller's name, except as herein expressly provided.

22. NOTICES - All notices, requests, demands and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to an officer of the party, (ii) mailing the same by registered or certified mail, return receipt requested or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of such party, or such other address as the parties may hereinafter designate, or (iii) facsimile subsequently to be confirmed in writing pursuant to item (ii) above. Notices to Seller shall be sent to Dynatech International LLC, 150-M Executive Drive, Edgewood, New York 11717.