



a photonics revolution

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3SAE Technologies, Inc.

STANDARD TERMS AND CONDITIONS OF SALE FOR FIBER OPTIC PRODUCTS

The following terms and conditions (the "Terms and Conditions") apply to all sales of fiber optic products and services (collectively, the "Products") by 3SAE Technologies, Inc. ("3SAE") to its customers (each a "CUSTOMER"). References to a "Party" or to the "Parties" herein shall mean either 3SAE or CUSTOMER or each of them together. By ordering or accepting any Products or services from 3SAE, CUSTOMER agrees to be legally bound as follows:

SECTION 1. FORMATION OF THE CONTRACT An agreement between the Parties, if made and entered into by way of a purchase order and an acceptance thereof, shall be deemed to have been made and entered into when the CUSTOMER has issued a written purchase order and 3SAE has issued a written acceptance of said purchase order. Any alteration and/or supplement to any purchase order shall be valid only if such alteration and/or supplement is confirmed in writing by 3SAE.

SECTION 2. QUOTATIONS Unless otherwise specified in a written statement signed by 3SAE, no price quote, including, without limitation, a budgetary quote rendered in connection with any preliminary request for information, shall be binding. Any binding price quote given by 3SAE shall be effective for thirty (30) days, unless otherwise specified in a written statement signed by 3SAE.

SECTION 3. TERMS OF PAYMENT. "Built to Order" Products shall be marked as such on the purchase order and/or the acceptance. Built to Order Products require a non-refundable payment equal to twenty-five percent (25%) of the Built to Order Products total cost upon acceptance of the purchase order. The balance will be paid to 3SAE upon shipment, pursuant to an invoice. For all standard Products, 3SAE shall invoice CUSTOMER for Products upon shipment. All payments owed by CUSTOMER to 3SAE including, without limitation, payment for the purchase price of Products purchased, applicable taxes, inventory charges, cancellation charges and price adjustments for failure to purchase forecasted quantities of Products are payable in US Dollars and will be due thirty (30) days after receipt of the Products by CUSTOMER, unless otherwise agreed by 3SAE's Credit Department. CUSTOMER is responsible for all taxes related to any purchase of Products covered hereby, except for taxes based on 3SAE's net income (such as corporate income tax). Payments owed by CUSTOMER to 3SAE are not subject to any right of set off by CUSTOMER. 3SAE shall be entitled to charge interest on payments not received within thirty (30) days after the due date. Interest shall accrue at the rate of ten percent (10%) per annum (calculated from the date such amount become due and owing) on the amount due; provided that in the event that such interest rate violates applicable usury laws, then such rate shall be reduced to the highest rate (if any) allowed by such laws. In the event that CUSTOMER is more than sixty days in arrears on its payment obligations or has failed to make two or more payments on a timely basis within any three hundred and sixty five (365) day period, then 3SAE shall not be obligated to make future deliveries to CUSTOMER hereunder until CUSTOMER wire transfers the funds to 3SAE or establishes with 3SAE an irrevocable letter of credit in form and substance acceptable to 3SAE up to the amount of the aggregate price of the then remaining Products to be sold pursuant any purchase of Products covered hereby. Such letter of credit shall be established with a bank reasonably acceptable to 3SAE. Unless otherwise agreed in writing, payment on export orders shall be made by wire transfer in U.S. dollars from CUSTOMER to 3SAE.

SECTION 4. DELIVERY OF PRODUCTS; CANCELLATION, RESCHEDULING AND DELAYED ORDERS

A. SHIPPING SCHEDULE. 3SAE and CUSTOMER shall agree on a mutually convenient delivery schedule for Products. All Products shall be shipped F.O.B. 3SAE's manufacturing facility or as otherwise specified by 3SAE in 3SAE's purchase order acceptance or related correspondence. 3SAE reserves the right to ship Products or partial orders prior to the agreed shipment date in order to accommodate 3SAE's overall delivery schedules.

B. CANCELLATION, RESCHEDULING AND DELAYED ORDERS. CUSTOMER shall have no right to cancel any purchase order or to reschedule any scheduled delivery of Products covered by a purchase order, except with 3SAE's written permission. The foregoing notwithstanding, any deposit paid by CUSTOMER shall be considered earned and paid to 3SAE immediately upon the cancellation of a purchase order. For "Built to Order" Products the balance of the total cost shall be considered earned and due upon cancellation. In the event that CUSTOMER shall delay or reschedule any delivery of Products or portion thereof with 3SAE's written permission, CUSTOMER shall pay an additional charge (a "Delay Charge") to 3SAE at the rate of one and one-half percent (1.5%) per month on the aggregate price of the order or the portion of the order so delayed or rescheduled, which amount shall accrue during the period beginning on the original shipment date and ending on the date that the Products are shipped to CUSTOMER.

C. INSPECTION Upon receipt of Products, CUSTOMER shall inspect such Products within (10) ten business days. If upon such inspection, CUSTOMER finds any Products to be missing or defective, CUSTOMER shall promptly provide 3SAE with written notification of such condition, and to the carrier where applicable. In no event shall the inspection and/or acceptance of any Product by CUSTOMER, or the payment for such Product by CUSTOMER, impair CUSTOMER's rights under the warranty provisions stated herein.

SECTION 5. PROPRIETARY INFORMATION

A. OWNERSHIP OF PROPRIETARY MATERIAL IN PRODUCTS; USE OF PRODUCTS. CUSTOMER acknowledges that the Products contain proprietary technical information of 3SAE (collectively "Proprietary Materials") and that as between 3SAE and CUSTOMER ownership of all patents, copyrights, mask work rights, trademarks, trade names, know-how and other intellectual property rights relating to or residing in the Products, the Proprietary Materials and the services rendered by 3SAE shall remain with 3SAE. CUSTOMER understands and agrees that these Terms and Conditions do not constitute a sale of any Proprietary Materials or any such intellectual property rights; except that CUSTOMER shall have the limited right to use Proprietary Materials to the extent required for the use of the Products. CUSTOMER agrees to assign to 3SAE any and all intellectual property rights, including, without limitation, rights based on patent, know-how, and copyright, without regard to inventorship or authorship, where those rights are in any way based upon the Products, the Proprietary Materials, or any services rendered by 3SAE. CUSTOMER shall promptly notify 3SAE of any actual or threatened misappropriation or infringement of 3SAE's proprietary rights which comes to CUSTOMER's attention.

B. TRADEMARKS. CUSTOMER shall not remove from the Products (or their packaging or documentation), or alter, any of 3SAE's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Products without the prior express written consent of 3SAE.

SECTION 6. CONFIDENTIAL INFORMATION All documentation, drawings, samples, designs, specifications, engineering details and related information pertaining to the Products, as well as the Proprietary Materials and any services provided by 3SAE to CUSTOMER, whether in oral, written, graphic or electronic form, are and shall remain the confidential and proprietary information of 3SAE ("Confidential Information"). CUSTOMER agrees to (a) disclose Confidential Information to only

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those directors, officers and employees of CUSTOMER (collectively "Affiliates") whose duties justify their need to know such information and who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information; and (b) use Confidential Information only for the purposes set forth in these Terms and Conditions and not for any purpose detrimental to 3SAE. In any event, CUSTOMER shall treat all Confidential Information as strictly confidential and shall use at least the same care to prevent disclosure of such information as CUSTOMER uses with respect to its own confidential and/or proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. CUSTOMER agrees to not copy any Confidential Information without the express prior written consent of 3SAE, and all Confidential Information (and copies thereof) shall be returned promptly to 3SAE upon request. Notwithstanding the foregoing, information disclosed to CUSTOMER shall not be deemed to be Confidential Information if (i) CUSTOMER establishes that the information was already known to CUSTOMER, without obligation to keep it confidential, at the time of its receipt from 3SAE as evidenced by documents in the possession of CUSTOMER prepared or received prior to 3SAE's disclosure; (ii) CUSTOMER establishes that the information was received by CUSTOMER in good faith from a third-party lawfully in possession thereof and having no obligation to keep such information confidential; or (iii) CUSTOMER establishes that the information was publicly known at the time of its receipt by CUSTOMER or has become publicly known other than by a breach of these Terms and Conditions or other agreement or action by CUSTOMER. To the extent that, CUSTOMER and 3SAE have entered into a separate confidentiality agreement applicable to the matters specified in this Section 6, such agreement shall supersede this Section 6, for as long as it survives, but only to the extent that (i) this Section 6 and such agreement conflict or (ii) such agreement states that it supersedes all other agreements between the parties with respect to confidentiality. Notwithstanding the previous sentence, to the extent that such other agreement supersedes this Section 6, CUSTOMER's agreement in Section 11.H hereof shall apply to such agreement.

SECTION 7. PATENT, COPYRIGHT AND TRADEMARK INDEMNITY

A. INDEMNITY. Subject to the provisions of this Section 7 and Sections 8 and 10 below, 3SAE shall at its expense defend any action against CUSTOMER to the extent such action is based on a claim that a Product infringes a United States patent, copyright or trademark, and 3SAE shall pay those damages and costs finally awarded against CUSTOMER in such action that are specifically attributable to such claim, provided that CUSTOMER notifies 3SAE promptly in writing of such action, CUSTOMER gives 3SAE sole control of the defense thereof (and any negotiations for settlement or compromise thereof), and CUSTOMER cooperates in the defense thereof. If any Product becomes, or in 3SAE's opinion is likely to become, the subject of a claim of infringement, then CUSTOMER shall permit 3SAE, at its option and expense, either to (1) procure the right to continue using such Product, (2) replace or modify such Product so that it becomes non-infringing, (3) accept return of such Product and give CUSTOMER a credit therefore, or (4) substitute an equivalent non-infringing version of the Product. CUSTOMER shall not incur any costs or expenses for the account of 3SAE under or pursuant to this Section 7 without 3SAE's express prior written consent. THE FOREGOING STATES THE ENTIRE LIABILITY OF 3SAE FOR INFRINGEMENT CLAIMS AND ACTIONS.

B. CERTAIN EXCEPTIONS. 3SAE shall have no liability to CUSTOMER under this Section 7 or otherwise for any action or claim alleging infringement based upon any conduct involving (1) the use of any Product in a manner other than as permitted herein or as specified by 3SAE, (2) the use of any Product in combination with other products, equipment, devices or software not supplied by 3SAE, (3) the alteration, modification, reconfiguration or customization of any Product by any person other than 3SAE, or (4) CUSTOMER's specifications or other designs or plans provided by CUSTOMER. In the event of any action or claim, including an infringement action or claim, against 3SAE which is based on any conduct described in the preceding sentence, CUSTOMER shall at its own expense defend 3SAE against such action or claim, and CUSTOMER shall pay any and all damages and costs finally awarded against 3SAE in connection with such action or claim.

SECTION 8. LIMITED WARRANTY

A. WARRANTY TERMS. Subject to the provisions of this Section 8 and Section 10 below, with respect to each Product sold by 3SAE hereunder (excluding consumables), 3SAE warrants that, for a period of one (1) year from the date such Product is shipped from 3SAE's facility or the date title to such Product passes to CUSTOMER, whichever date is earlier (such period referred to herein as the "Warranty Period"), all components of such Product shall be free from faulty workmanship and defective materials and comply with quality specifications for such Product published by 3SAE (if any). The foregoing applies to sales of new Products only. The Warranty Period for repaired or refurbished Products shall be ninety (90) days from the date that such repaired or refurbished Product is shipped from 3SAE's facility. Any action by CUSTOMER to repair or modify Products shall void any warranty otherwise provided herein unless such repair or modification is undertaken by repair personnel certified by 3SAE to make such repairs or modifications. The warranties provided by 3SAE in this Section 8.A are the only warranties provided by 3SAE with respect to the Products sold hereunder. These warranties are not transferrable by CUSTOMER and may be modified or amended only by a written instrument signed by 3SAE and accepted by CUSTOMER. CUSTOMER's remedies and 3SAE's aggregate liability with respect to the warranties provided by 3SAE in this Section 8.A are set forth in and are limited by this Section 8 and Section 10 below.

B. WARRANTY CLAIMS. If, during the applicable Warranty Period for a Product sold by 3SAE hereunder, it is determined that any component of such Product does not conform to the limited warranty set forth in Section 8.A, then CUSTOMER may, after obtaining a return authorization number and shipping instructions from 3SAE, return such Product to 3SAE, cost of shipping at CUSTOMER's expense. Upon receipt of any such Product during the applicable Warranty Period, 3SAE shall, at its option and expense, (1) repair or replace such Product, and ship such Product (Federal Express, 3-day air) to the location from which it was returned to 3SAE, at 3SAE's expense, (2) pay CUSTOMER its reasonable costs of remedying such defective Product (provided that prior to incurring any such cost, CUSTOMER shall have received 3SAE's prior written consent) or (3) give CUSTOMER a credit for such Product. All replaced Products or parts thereof or Products returned to 3SAE for credit shall become 3SAE's property. Repair or replacement of a Product (or any part thereof) does not extend the Warranty Period for such Product.

C. OTHER LIMITATIONS. THE EXPRESS LIMITED WARRANTIES OF 3SAE STATED IN SECTION 8.A ABOVE DO NOT APPLY TO (1) PRODUCTS NOT MANUFACTURED BY 3SAE, SPARE PARTS OR SERVICES, (2) PRODUCTS, OR COMPONENTS THEREOF WHICH HAVE BEEN IMPROPERLY TRANSPORTED, INSTALLED OR USED, ALTERED, MODIFIED, RECONFIGURED, CUSTOMIZED, REPAIRED OR SERVICED IN ANY RESPECT, EXCEPT BY 3SAE OR ITS REPRESENTATIVES, (3) PRODUCTS WHERE SERIAL NUMBERS, WARRANTY DATA OR QUALITY ASSURANCE DECALS HAVE BEEN REMOVED OR ALTERED, (4) PRODUCTS USED BY ANY PERSON OR ENTITY OTHER THAN CUSTOMER, (5) PRODUCTS THE INVOICE FOR WHICH HAS NOT BEEN PAID IN FULL IN ACCORDANCE WITH THE PAYMENT TERMS AND (6) PRODUCTS THAT ARE DEFECTIVE AS A RESULT OF 3SAE'S ADHERENCE TO PRODUCT SPECIFICATIONS PROVIDED BY CUSTOMER. NO ACTION BY CUSTOMER ARISING UNDER SECTION 8.A ABOVE OR OTHERWISE IN CONNECTION WITH THE SALE OF THE PRODUCTS MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION FIRST ARISES.

D. DISCLAIMER. THE EXPRESS WARRANTIES OF 3SAE STATED IN SECTIONS 7 AND 8.A ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE EXPRESS OBLIGATIONS OF 3SAE STATED IN SECTIONS 7 AND 8.B ABOVE ARE IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION OF 3SAE, INCLUDING WITHOUT LIMITATION ANY LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY (WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL) ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE PRODUCTS.

SECTION 9. DEMONSTRATION/LOANER EQUIPMENT. CUSTOMER shall bear the entire risk of loss of requested demonstration/loaner equipment until CUSTOMER returns said demonstration/loaner equipment in good order and condition, reasonable wear and tear only excepted, freight prepaid, to the 3SAE, in accordance with the instructions CUSTOMER has received for such return from 3SAE. It is the CUSTOMER'S responsibility to contact 3SAE for such instructions. Returned equipment will be promptly evaluated by 3SAE. 3SAE shall invoice CUSTOMER at the then-current prices for any demonstration/loaner equipment, or parts thereof, that are missing, damaged, or excessively worn. CUSTOMER will not remove, obliterate, or deface 3SAE'S name tag and may not in any way modify or alter any demonstration/loaner equipment furnished hereunder without the prior written consent of the 3SAE. Further, CUSTOMER may not misuse or abuse the demonstration/loaner equipment. In the event of CUSTOMER'S breach of this provision, or if reasonable grounds for insecurity arise with respect to CUSTOMER'S

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continued adherence to the requirements of this provision, 3SAE shall have the right to immediately recover possession of all demonstration/loaned equipment then in CUSTOMER'S possession. 3SAE shall also have the right to charge a weekly rental rate for any and all equipment not returned by the established due date back to 3SAE.

SECTION 10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS AND CONDITIONS: 3SAE SHALL NOT BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS, REPROCUREMENT COSTS OR ANY DAMAGES RESULTING FROM LOSS OF USE OR DATA ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS), EVEN IF 3SAE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS ON 3SAE'S LIABILITY SET FORTH IN THIS SECTION 10 SHALL NOT APPLY TO LIABILITY FOR DEATH, OR PERSONAL INJURY OF A PHYSICAL NATURE CAUSED BY 3SAE'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE FOREGOING STATES THE ENTIRE LIABILITY OF 3SAE WITH REGARD TO THESE TERMS AND CONDITIONS AND THE PRODUCTS. THE LIMITATIONS OF LIABILITY CONTAINED IN SECTIONS 8 AND 9 ABOVE AND THIS SECTION 10 ARE A FUNDAMENTAL PART OF THE BASIS OF 3SAE'S BARGAIN HEREUNDER, AND 3SAE WOULD NOT SELL THE PRODUCTS ABSENT SUCH LIMITATIONS.

SECTION 11. GENERAL

A. ENTIRE AGREEMENT. These Terms and Conditions constitute the final, complete and exclusive agreement between the Parties relating to the subject matter hereof, and supersede all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written, relating to such subject matter (including without limitation any prior "Standard Terms and Conditions" published by 3SAE). Except for agreements of the Parties set forth in writing and signed by an authorized representative of 3SAE relating to the type, quantity, quality/specifications, delivery, forecasting schedule and pricing of any Product, any term or condition in any purchase order, confirmation or other document furnished by CUSTOMER at any time which is in any way inconsistent with or in addition to the terms and conditions set forth herein is hereby expressly rejected, and 3SAE's acceptance of any purchase order of CUSTOMER is expressly made in reliance on CUSTOMER's assent to all terms and conditions hereof. No deviation from these Terms and Conditions shall be valid unless confirmed in writing by an authorized representative of 3SAE.

B. GOVERNING LAW. These Terms and Conditions shall for all purposes be governed by and interpreted in accordance with the laws of the State of Delaware without regard to any choice of law provision that would result in the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to these Terms and Conditions. The Parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods.

C. ARBITRATION. If a dispute arises related to the purchase and sale of the Products and the Parties have not resolved such dispute through negotiation, the Parties agree to submit the dispute to arbitration. Any arbitration proceeding relating to the Agreement shall be presided over by one arbitrator who shall be agreed to by the Parties, provided that if the Parties are unable to agree on an arbitrator, then each Party shall name one arbitrator and the two arbitrators will together designate a third arbitrator, and the three arbitrators so chosen shall preside over the arbitration proceeding. The arbitration shall be held in Nashville, Tennessee in accordance with the rules of the American Arbitration Association. Arbitration proceedings shall be conducted in the English language. Each Party agrees that the final determination/decision of the arbitrators presiding over the proceeding shall be binding on it. Notwithstanding the foregoing, the Parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, including, but not limited to, relief for breach of confidentiality restrictions or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision. The prevailing Party in any dispute related hereto, whether in a court of law or in arbitration, shall have its reasonable costs and expenses related to such dispute reimbursed by the non-prevailing Party.

D. SEVERABILITY. If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect.

E. MODIFICATIONS. Neither Party may modify, amend, supplement or otherwise change these Terms and Conditions without the prior written consent of the other Party. Any such future modification, amendment, supplement or other change (a "Change") shall apply only with respect to orders accepted after the effective date of such Change.

F. ASSIGNMENTS. No right of either Party under these Terms and Conditions shall be assigned or otherwise transferred, whether by agreement, operation of law or otherwise, without the prior express written consent of the other Party, and any attempt to assign or otherwise transfer any rights hereunder, without such consent, shall be void. Subject to the preceding sentence, these Terms and Conditions shall bind the Parties hereto and therein permitted successors and assigns.

G. WAIVERS. All waivers must be in writing. The failure of either Party to insist upon strict performance of any provision of these Terms and Conditions, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

H. EQUITABLE REMEDIES. CUSTOMER agrees that any breach by CUSTOMER of Sections 5, 6 or 7 above would cause irreparable injury to 3SAE for which no adequate remedy at law exists; therefore, CUSTOMER agrees that equitable remedies, including without limitation injunctive relief and specific performance, without the necessity of proving actual damages or posting any bond, are appropriate remedies to redress any breach or threatened breach of Sections 5, 6 or 7, above, in addition to all other remedies available to 3SAE.

I. MISCELLANEOUS. These Terms and Conditions are not intended to provide any rights or remedies to any person or entity other than 3SAE and CUSTOMER and their respective permitted successors and assigns (if any).

J. FORCE MAJEURE. 3SAE shall not be responsible for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including, without limitation, as a result of fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, insurrection, riot, act of God or the public enemy, law, acts, orders, omissions, export control regulation, proclamation, decree, regulation, ordinance, or instructions of Government or other public authorities, or judgment or decree of a court of competent jurisdiction. If any such contingency occurs, 3SAE may elect to either (a) suspend its obligations for the duration of the delaying cause, or (b) extend the time period to complete its obligations by the length of time the contingency endures. In the event of 3SAE's inability to supply any or all of the Products due to any of the above circumstances, 3SAE will have the right to allocate its available supply among its CUSTOMERS, or any of them, as 3SAE, in its sole discretion, elects without liability to CUSTOMER for any failure of performance that may result therefrom. To the extent that no allocation is made to CUSTOMER, either CUSTOMER or 3SAE will have the right to terminate any affected purchase orders by prompt written notice to the other.

K. CONSTRUCTION AND SURVIVAL. Notwithstanding anything to the contrary contained in herein, these Terms and Conditions shall survive the purchase and sale of the Products hereunder.

L. EXPORT. These commodities are subject to the control of the U.S. Export Administration Regulations (15 C.F.R. Parts 730-780). Diversion contrary to U.S. law is strictly prohibited.

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