



## COHERENT TERMS AND CONDITIONS OF SALE CANADA

### 1. LIMITS OF AGREEMENT.

Coherent, Inc., including, without limitation, any of its direct or indirect subsidiaries (“**Coherent**” or “**Seller**”) hereby offers to sell to the buyer identified on the face of the quote (“**Buyer**”), or accepts the Buyer’s offer to purchase, any of the products (“**Products**”) or services (“**Services**”) set forth on the face of the applicable quote solely in accordance with both (a) the terms and conditions contained in these Coherent Terms and Conditions of Sale – North America (the “**North America Terms**”); and (b) the terms and conditions set forth on the face of the quote provided by Seller to Buyer (the “**Quote Terms**,” together with the North America Terms, the “**Terms**”). Unless otherwise expressly stated in writing, with respect to any conflicts between the North America Terms and the Quote Terms, the Quote Terms will control. All offers by Seller to sell the Products or provide Services are expressly limited to the Terms. If Buyer has ordered Products or Services from Coherent and such order is deemed by Coherent to be an offer by Buyer, Coherent’s acceptance of such offer is expressly conditioned on Buyer’s agreement to the Terms, to the exclusion of all other terms and conditions. Any additional, different, or conflicting terms or conditions proposed by Buyer in any offer, acceptance, or confirmation, including those set forth on any Buyer purchase order, specifications, or other documents issued by Buyer are considered by Coherent to be requests for material alterations of the Terms, are hereby rejected, and will not be binding in any way on Coherent. Buyer is hereby notified of Coherent’s objection to all such additional, different, or conflicting terms and conditions. No waiver or amendment of any of the Terms will be binding on Coherent unless made in a writing expressly stating that it is such a waiver or amendment and signed by an officer of Coherent. Buyer will have accepted (and will be deemed to have accepted) these Terms if Buyer does any of the following: (a) accepts the Terms in writing,

(b) pays (in part or whole) for any Products or Services, or (c) receives delivery of any Products or Services. All Coherent offers are open for acceptance for no longer than the period stated on the face of the quote issued by Coherent, or, when no period is stated, thirty (30) days from the date of the offer, but any offer may be withdrawn or revoked by Coherent at any time prior to the receipt by Coherent of Buyer’s acceptance of such offer. No person, including any sales representative, order gatherer, or liaison officer for Coherent, is an agent for Coherent or has authority to extend or accept an offer on Coherent’s behalf.

### 2. PRODUCTS AND SERVICES PROVIDED AND PRICE.

(a) Unless otherwise provided on the front of this form, Products pursuant to the Terms shall be newly manufactured products but may contain components which have been previously used in other product units that meet or exceed the Seller’s specifications for newly manufactured components.

(b) The prices for Products and Services are those set forth on the face of the quote provided by Seller. The cost of packaging for normal domestic shipment is included in the invoiced price for Products.

(c) Prices and orders do not include federal, state, provincial, municipal or local excise, sales, use or other taxes or customs or import duties, if applicable (excluding only taxes based on Seller’s income), which are applicable to the Products and Services. Such tax and duties will be added by Seller to the sales price when Seller has the legal obligation to collect the same and Buyer will pay such taxes and duties unless Buyer provides Seller with a proper tax exemption certificate for each jurisdiction in which taxes otherwise would be due. In the event Seller is required to pay any such tax or duty at the time of

sale or thereafter, Buyer will promptly reimburse Seller for the total amount of any such tax or duties.

(d) Unless expressly agreed to in writing by Seller, prices quoted are for the Products and Services described on the face of the quote by Seller only and do not include any technical data, proprietary rights of any kind, or patent rights.

(e) If the price of fuel, metals, raw materials, or other production costs increases significantly, Coherent will have the right to impose a reasonable surcharge for all affected Products or Services

### **3. PAYMENT TERMS.**

(a) Subject to credit approval by Seller and unless otherwise specified by Seller on the face of the quote provided by Seller, all payments are due and payable in full thirty (30) days from the date of invoice. Seller reserves the right to require alternative payment terms, including, without limitation, sight draft, letter of credit or payment in advance. Coherent may require the disclosure and evaluation of Buyer's financials to extend credit to Buyer. Coherent, at any time and its sole discretion, may change or withdraw Buyer's credit. All payments shall be made to Seller at its principal office in Santa Clara, California, or such other office as designated on the face of the quote provided by Seller. Interest will accrue on overdue invoices on the unpaid balance from the original due date of the invoice at the rate of one and one-half percent (1 ½%) per month, or the highest rate permitted by law, whichever is less. Buyer may not withhold payment for any delay in installation due to a Buyer request or issue, or any delay in delivery of required documentation.

(b) Notwithstanding the foregoing, all orders are subject to, and the obligation of Seller to make deliveries is subject to, the right of Seller, in its sole discretion, to either (a) require of the Buyer payment for all or any part of the purchase price in advance of delivery; or (b) to make shipment C.O.D. If the Buyer fails to make advance payment when requested by Seller, or if the Buyer is or becomes delinquent in the payment of any sum due to Seller (whether or not arising out of

the same order) or refuses to accept C.O.D. shipment, then Seller shall have the right, in addition to any other remedy to which it may be entitled in law or equity, to cancel the sales order, refuse to make further deliveries, or declare immediately due and payable all unpaid amounts for Products or Services previously delivered to the Buyer.

(c) If Products or Services covered by these Terms are not delivered or performed at one time, Buyer will pay for the quantity of Products delivered or Services performed. Partial shipments made under any order will be treated as separate and independent transactions. However, in the event of any default by Buyer, Coherent may decline to make further shipments without in any way affecting its rights under such order.

(d) To secure any or all of its obligations under these Terms and the applicable quote, Buyer hereby grants and pledges to Coherent a first priority security interest. In all of such Buyer's right, title and interest in and to any and all Products or proceeds of the foregoing, whether presently existing or hereinafter acquired. If Buyer defaults under any obligation under these Terms or the applicable quote, Coherent may pursue all remedies of a secured creditor provided under the UCC or other applicable law. Buyer agrees that Coherent may file such financing statements and amendments thereto as Coherent deems necessary to protect its interest in the Products or proceeds thereof and to effectuate the purposes this section. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement. Upon Coherent's request, Buyer will execute and file any documents to perfect Coherent's security interest and/or mortgage in any Products. The Buyer waives the right to receive a copy of any financing statement or financing change statement that may be registered in connection with these Terms or any verification statement issued with respect to a registration, if waiver is not otherwise prohibited by law. If required to do so by applicable law, the Seller will give the Buyer written notice of any intended disposition of the Products in accordance with these Terms or

by any other method required or permitted by applicable law. To the maximum extent permitted by applicable law, the Buyer waives such giving of notice and all of the rights, benefits and protections given by any present or future statute that imposes limits on the rights, remedies or powers of the Seller or on the methods of realization of security.

#### **4. TRANSPORTATION; INSURANCE, TITLE AND RISK OF LOSS.**

(a) Unless otherwise agreed to in writing by Coherent, all transportation will be at the expense of Buyer. Coherent reserves the right to ship Products freight collect and to select the means of transportation and routing. Unless otherwise advised, Coherent may insure to the full value of the Products or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs will be for Buyer's account. All prices are exclusive of insurance cost. Title and risk of loss or damage to Products will pass to Buyer F.O.B. (Incoterms 2010) upon delivery to the carrier at Seller's place of manufacture or warehouse location which shall be either be the address set forth by Seller on the quote or as designated by Seller in its published specifications.

(b) Seller may at its option obtain insurance for the Products covering their delivery to Buyer and Buyer agrees to reimburse Seller for the cost of providing such insurance. If Buyer has not been notified of the existence of insurance coverage and provides its own insurance for such shipment Seller will waive its insurance charge.

(c) Confiscation or destruction of, or damage to Products shall not release, reduce or in any way affect the liability of Buyer for such Products. Notwithstanding any defect or nonconformity, or any other matter, risk of loss will remain with Buyer until the Products are returned at Buyer's expense to such place (or places) as Seller may designate in writing. Buyer, at its expense, shall fully insure Products against all loss or damage until Seller has been paid in full therefore, or the Products have been returned, for whatever reason, to Seller.

#### **5. SHIPMENT.**

Coherent will use commercially reasonable efforts to meet shipment schedules. However, any shipment quote or forecast on an order acknowledgment is Coherent's best estimate of the time required to make shipment and Coherent will not assume liability, consequential or otherwise, because of any delay or failure to deliver all or any part of any order for any reason, including its negligence of any kind. Coherent reserves the right to allocate inventories and current production, reduce quantities to be delivered or Services to be performed, delay shipments, or allocate such Products or Services among customers in Coherent's sole discretion in any way it deems necessary. Should Coherent be unable to deliver Products or perform Services when estimated, Coherent will not be liable for failure to deliver or perform by such estimated dates unless expressly agreed to by Coherent in writing. Buyer may not cancel, push-out, or reschedule any purchase order placed with Coherent, except with Coherent's written consent.

#### **6. INSPECTION AND ACCEPTANCE.**

The Buyer will have the right to inspect Products upon tender of delivery, however, such right to inspect does not impair or impact the transfer of title as set forth in Section 4. Products will be deemed accepted upon tender of delivery as set forth in Section 4. Any errors, alleged defect or nonconformity discovered by Buyer in its inspection of Products shall be resolved in accordance with Section 9. Services will be deemed accepted by Buyer upon being rendered.

#### **7. RETURNS.**

All warranty returns must be handled in accordance with Section 9 below. No products may be returned to Coherent for credit without first obtaining Coherent's prior written consent and the issuance by Seller of a returned material authorization form ("**Returned Material Authorization form**"). The request for return and credit must be filed with Coherent and include the purchase order number, approximate date shipped, and any and all other identifying

numbers (such as invoice number, date of invoice, P.O. numbers, etc.). The request for return and credit must also state the type and quantity of Products, the part numbers, and the reasons for return. If return authorization is granted, Buyer will return Products in a clean, well-packaged, and properly maintained condition. No returns will be allowed for Products that have been subject to misuse, negligence or accident. No credit allowance will be made and no replacement for defective Products will be shipped except as set forth in the warranty provisions set forth below in Section 9.

## **8. TERMINATIONS.**

Unless otherwise agreed by Seller or as set forth in the quote provided by Seller, any order for a Product that has been accepted by Seller and terminated by Buyer at least forty-five (45) days prior to the scheduled shipment date, shall be subject to a termination charge of not less than ten percent (10%) of the order value plus any additional costs of processing and order handling not covered by the termination charge; provided, however that, Buyer may not terminate any order without prior written agreement by Seller and, in the absence of such prior written agreement Seller may require Buyer to pay a termination charge determined by Seller in its sole discretion of not less than twenty-five percent (25%) of the order value. Thereafter no order may be terminated except by prior written agreement by Seller. Terminations by mutual agreement for Products or Services are subject to the following conditions:

- (i) Buyer will pay, at applicable contract prices, for all Products which are completely manufactured and allocable to Buyer at the time of Seller's receipt of notice of termination;
- (ii) Buyer will pay all costs, direct and indirect, which have been incurred by Seller with regard to Products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rata portion of the normal profit on the contract;
- (iii) Buyer will pay a termination charge on all other Products affected by the termination.

Seller's normal accounting practices shall be used to determine costs and other charges.

(iv) To reduce termination charges, Seller will use commercially reasonable efforts to divert completed parts, material or work-in-progress from terminated contracts to other customers whenever, in the Seller's sole discretion, it is practicable to do so. In the event of a termination, Buyer will have no rights in partially completed Product. Buyer may not reschedule the delivery date for any Products or Services without the prior written agreement of Seller.

## **9. LIMITED WARRANTY - LIMITATION OF REMEDIES .**

(a) Seller warrants to Buyer that the Products delivered under the Terms will (1) comply with either the applicable Seller published specifications for the Products, or the specifications mutually agreed and confirmed in writing between Seller and Buyer for the earlier to occur or mutually agreed and confirmed on Seller's quotation and (2) will be free from defects in material and workmanship under proper use, service and condition during the defined warranty period. If the Products include any service parts provided by Seller pursuant to a service event, the warranty period for such service parts shall be ninety (90) days from the date of shipment or the remainder of the initial warranty period, whichever is shorter, unless otherwise expressly specified by Seller on the face of Seller's quote. Unless otherwise expressly specified by Seller on the face of the quote, the warranty for any depot repairs of Products is ninety (90) days from the date of return shipment by Seller or the remainder of the initial warranty period, whichever is shorter. The Seller shall have the right, in its sole discretion, to extend the length of the initial warranty period by delivering notice in writing to the Buyer setting out the length of such extension. Seller warrants to Buyer that it will provide any Services consistent with general industry standards. To the maximum extent permitted by and subject to applicable law, but notwithstanding anything to the contrary in the Terms, all (i) Services performed under these Terms, (ii) Products, delivered as "samples", "design verification units", and/or "prototypes",

and (iii) Licensed Software (as defined below) are provided or sold “AS IS,” “WITH ALL FAULTS,” and with no warranty whatsoever.

(b) The Buyer acknowledges and agrees with the Seller that any after-sales service work (including, but not limited to, installation, repair, service or maintenance of the Products or supervision of such functions) to be performed on the Products during the applicable warranty period requires specialized knowledge and shall be performed exclusively by an employee, contractor, representative or agent of the Seller who has a very high degree of knowledge in respect of the Products and already has the requisite skills obtained through extensive training in respect of the service, maintenance and repair of the Products. The Buyer acknowledges and agrees that the Seller may supervise or train any employee, contractor, representative or agent of the Seller or the Buyer regarding the use of the Products at the Buyer’s location set forth on the face of the quote or at such other location where the Products are located as agreed by the Seller and the Buyer from time to time.

(c) This warranty is the only warranty made by Seller with respect to the Products and Services. No representative or person is authorized to bind Seller for any warranty, obligation or liability, express or implied. This warranty provided in this Section 9 is made to the original purchaser only at the original location and is nontransferable, and may only be modified or amended by a written instrument signed by a duly authorized officer of Seller. Major sub-systems manufactured by other firms but integrated into Seller’s system may be covered by the original manufacturer’s warranty and Seller makes no warranty, express or implied regarding such sub-systems. Products or parts which are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific Product.

(d) No Product may be returned to Coherent without first obtaining Coherent’s consent and a Returned Material Authorization form. If, and subject to the limitations of this Section 9 during an applicable warranty period, defective Products

are returned to Coherent, F.O.B (Coherent’s dock at either the location (a) where manufactured or (b), if applicable, set forth on the face of Coherent’s quote) (Incoterms 2010), transportation costs prepaid and borne by Buyer accompanied by Coherent’s Returned Material Authorization form, Coherent will, at its sole option, either repair, replace, or credit Buyer the purchase price of such products. Buyer will return products in a clean, well-packaged condition. No credit allowance on Products will be made and no replacement for Products will be shipped, unless the Products are established to Coherent’s satisfaction, after suitable testing and inspection by Coherent, to be defective. Prior to any return of Products by Buyer pursuant to these Terms, Buyer will afford Coherent the opportunity to inspect such Products at Buyer’s location. Products or parts which are replaced or repaired under this warranty are warranted only for the remaining unexpired portion of the original warranty period applicable to the specific Product. The risk of loss of the goods shipped or delivered to Seller’s plant for repair or replacement will be borne by Buyer.

(e) The remedies in this Section 9 are available only if Coherent is notified in writing by Buyer promptly upon discovery that a Product does not conform to this warranty, including a detailed description of such nonconformance and Buyer provides Coherent the purchase order number(s), approximate date shipped, and any and all other identifying numbers (such as invoice number, date of invoice, etc.) within the warranty period for the individual Product, and Coherent’s examination of such Products discloses to Coherent’s satisfaction that such Products do not conform to this warranty and the Products have not been (i) repaired, worked on, or altered by persons not authorized by Coherent so as, in Coherent’s sole judgment, to injure the stability, reliability, or proper operation of such Products; (ii) subject to misuse, negligence or accident; or (iii) connected, installed, used or adjusted otherwise than in accordance with the instructions furnished by Coherent.

(f) If it is found that any Product has been returned without cause and is still serviceable,

Buyer will be notified and the Product returned at Buyer's expense. In addition, a charge for testing and examination may, in Seller's sole discretion, be made on Products so returned.

(g) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY REMEDY IN SECTION 9 CONSTITUTES COHERENT'S EXCLUSIVE LIABILITY AND OBLIGATION, AND BUYER'S EXCLUSIVE REMEDY FOR ANY PRODUCTS OR SERVICES COVERED BY THESE TERMS, INCLUDING ANY BREACH OF ANY WARRANTY OR OTHER DEFECT OR NONCONFORMITY OF THE PRODUCTS OR SERVICES COVERED BY THESE TERMS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES. COHERENT MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE.

(h) OTHER THAN AS PROVIDED WITH RESPECT TO COHERENT'S EXPRESS WARRANTY OBLIGATIONS IN THESE TERMS, COHERENT IS NOT LIABLE FOR ANY COSTS ASSOCIATED WITH THE REPLACEMENT OR REPAIR OF ANY PRODUCT, INCLUDING LABOR, INSTALLATION, OR OTHER COSTS INCURRED BY BUYER AND, IN PARTICULAR, ANY COSTS RELATING TO THE REMOVAL OR REPLACEMENT OF ANY PRODUCT. UNDER NO CIRCUMSTANCES SHALL COHERENT HAVE ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES.

## **10. SELLER'S RIGHTS TO SUBCONTRACT.**

Seller may subcontract any portion of the manufacture of Product, delivery of Service provided, or other work in accordance with these Terms as well as any of Seller's obligations and rights under these Terms.

## **11. BANKRUPTCY OR INSOLVENCY OF BUYER.**

If the financial condition of the Buyer at any time is such as to give Coherent, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations under these Terms, Coherent may: (i) by notice in writing to Buyer, terminate or cancel these Terms, without any requirement of judicial intervention or declaration of default of Buyer and without prejudice to any right or remedy which may have accrued or may accrue thereafter to Coherent; and (ii) require full or partial payment in advance and suspend any further deliveries for continuance of the work to be performed by Coherent until such payment has been received.

## **12. INDEMNITY.**

(a) Coherent will, at its own expense, defend or settle any suit that may be instituted by a third party against Buyer to the extent based on a claim that the Product in the form provided by Coherent to Buyer under these Terms, infringes such third party's United States patent (excluding processes or methods claimed by such patent), trademark, or copyright if: (i) such alleged infringement is not based on an Excluded Claim (as defined in Section 12(b)); (ii) Buyer gives Coherent immediate notice in writing of any such suit; (iii) Buyer gives Coherent sole control over the defense and settlement of such suit; and (iv) Buyer gives Coherent all needed information, assistance and authority, at Coherent's expense, to enable Coherent to defend or settle such suit. In the case of a final award of damages in any such suit, Coherent will pay such award, but will not be liable for any settlement made without its prior written consent or legal fees incurred by Buyer in connection with any such settlement. In

satisfaction of this Section 12(a), Coherent, at its sole discretion, may (i) replace or modify the allegedly infringing products with non-infringing products that are functionally equivalent; (ii) obtain a license for Buyer to continue to use or sell the allegedly infringing Products; or (iii) accept the return of allegedly infringing products and refund the amount paid by the Buyer for such returned Products.

(b) Coherent will have no liability for, and the obligations of Coherent under Section 12(a) will not apply to any claim arising from or related to (i) the use of Products as a part of or in combination with any other devices, parts, processes or methods; (ii) Coherent's compliance with any designs, specifications, or instructions provided by or for Buyer; (iii) the use of Products contrary to any instructions issued by Coherent or in breach of these Terms; (iv) modifications or alterations to the Products; (v) the practice of any process or method relating to Buyer's or its customers' use of the Products; or (vi) use of the Products after receiving notice of such third party claim or by Coherent (collectively, "**Excluded Claims**").

(c) THIS SECTION 12 STATES COHERENT'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY ANY PRODUCTS OR SERVICES DELIVERED UNDER THESE TERMS, OR ANY PART THEREOF. THIS SECTION 12 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESSED, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT. IN NO EVENT WILL COHERENT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT.

(d) Buyer will, at its own expense, indemnify and hold Coherent harmless from and against any liabilities, costs, damages, or losses resulting

from any Excluded Claim, and will defend or settle at its own expense, including attorney's fees and costs, any suit brought against Coherent based on allegation arising from any Excluded Claim, provided that Coherent, (i) gives Buyer immediate notice in writing of any such suit, (ii) gives Buyer sole control over the defense or settlement of such suit; and (iii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend or settle such suit.

### **13. NO PROPRIETARY RIGHTS.**

(a) Coherent retains all rights in and to specifications, designs, engineering details, discoveries, inventions, patents, copyrights, trademarks, trade secrets and other intellectual and proprietary rights relating to the Products and Services. Sale of any Products by Coherent does not confer upon Buyer a license under any patents, trade secrets, trademarks or copyrights to combine any product furnished under these Terms with any other product or to modify any Product furnished under these Terms.

(b) The design, development or production of Products and provision of Services under these Terms will not be deemed to be a "work made for hire" or "commissioned work" and Coherent retains for itself all intellectual property and proprietary rights in and to all designs, engineering details, and other data and materials pertaining to any Products or Services supplied by Coherent and to all discoveries, inventions, patents and other proprietary rights arising out of the work done by Coherent in connection with the Products or Services or with any and all products developed by Coherent as a result thereof, including the sole right to manufacture any and all such products and Buyer covenants and warrants it will not manufacture or engage to have manufactured such products. All mask sets, design tapes, documentation, and other data generated by Coherent in the performance hereunder will remain the sole and exclusive property of Coherent. Any designs, cells, circuits, devices, processes or methods that are developed by Coherent concurrently with the work performed under these Terms will be the sole and exclusive property of Coherent, and Coherent

reserves the right to use such designs, cells, circuits, devices, processes or methods for other customers, or license their use to others. Coherent will retain title to and possession of all tooling, material or equipment of any kind used in the manufacture, testing, or assembly of products furnished under these Terms.

#### **14. CONFIDENTIAL INFORMATION.**

All information provided by Coherent to Buyer shall be deemed confidential information. All such confidential information of Coherent will be treated as confidential pursuant to the terms of the applicable nondisclosure agreement between Coherent and Buyer. But if there is no nondisclosure agreement in place, all information that Buyer knows, or should know, is confidential to Coherent, including, but not limited to, pricing and lead-time information, will remain the property of Coherent and may be used, reproduced and disclosed by Buyer only to the extent necessary to use the applicable Products and Services purchased under and in accordance with these Terms and not used, reproduced, or disclosed for any other purpose.

#### **15. SOFTWARE.**

Unless otherwise agreed to in a separate signed software license agreement between Coherent and Buyer, the following terms and conditions will apply to software and firmware in all forms, including any documentation provided by Coherent under these Terms (“**Licensed Software**”):

(i) Coherent retains full rights, title, and ownership including all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the Licensed Software;

(ii) For standalone Licensed Software, subject to and conditioned on these Terms, Coherent grants to Buyer a non-exclusive, nontransferable, non-sublicenseable, limited license to internally use the Licensed Software as a development platform solely in connection with Coherent products;

(iii) For Licensed Software embedded in Coherent products, subject to and conditioned on these Terms, Coherent grants to Buyer a non-exclusive, limited license to use and distribute the Licensed Software (in machine code only) solely as incorporated in Coherent products;

(iv) Subject to mandatory applicable law, Buyer agrees not to engage in, and to take all reasonable steps to prevent, unauthorized use and disclosure of, including without limitation any effort to reverse engineer, disassemble, de-compile, modify, or otherwise attempt to derive the source code of any Licensed Software or any portion thereof; and

(v) Buyer will not remove or destroy any trademark, copyright markings, legends, or notices placed upon or contained within the Licensed Software.

#### **16. EQUAL OPPORTUNITY.**

Coherent, Inc. certifies that it has developed and has on file affirmative action programs as required by the rules and regulations of Executive Order 11246, as amended and 41 C.F.R. Chapter 60, issued by the Department of Labor. In addition, Coherent, Inc. is in full compliance with section 503 of the Rehabilitation Act of 1973 and section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974.

#### **17. ERRORS.**

Stenographic and clerical errors are subject to correction by Seller.

#### **18. APPLICABLE LAW; JURISDICTION AND VENUE.**

The validity, performance and construction of these Terms, and any disputes arising from or relating thereto, will be governed by the laws of the State of California without reference to its conflict of laws principles. The California state courts of Santa Clara County, California (or if there is exclusive federal jurisdiction, the United States District Court for the Northern District of California) will have exclusive jurisdiction and

venue over any dispute arising out of any claim, dispute, or controversy among the parties arising out of or relating to these Terms, including the breach of these Terms, and Buyer hereby consents to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) shall not apply.

## **19. LIMITATION OF LIABILITY.**

Coherent will not be liable for any loss, damages or penalty resulting from delay in delivery of the products or performance of services when such delay is due to causes beyond the reasonable control of Coherent, including without limitation, supplier delay, force majeure, act of God, labor unrest, fire, explosion, earthquake, acts of civil or military authority, epidemics, floods, riots, wars, terrorism, sabotage, labor disputes, yield problems, governmental actions, or inability to obtain materials, components, energy, manufacturing services or facilities, or transportation on commercially reasonable terms. In any such event, the delivery date or date of performance will be deemed extended for a period equal to the delay or other longer reasonable time.

(a) COHERENT'S LIABILITY UNDER, FOR BREACH OF, OR ARISING OUT OF THE TERMS AND/OR SALE WILL BE LIMITED TO REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCTS (OR REPERFORMANCE OF THE SERVICES) OR A REFUND OF THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES, AT COHERENT'S SOLE OPTION, AS SET FORTH IN SECTION 9 ABOVE.

(b) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, IN NO EVENT WILL COHERENT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTED PRODUCTS OR SERVICES, NOR WILL COHERENT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES OR FOR LOST

PROFITS OR LOSS OF BUSINESS WHETHER OR NOT COHERENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS HOWEVER CAUSED, UNDER ANY LEGAL THEORY WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF COHERENT ARISING OUT OF OR RELATED TO THE TERMS AND/OR SALE, EVEN IF COHERENT IS APPRISED OF OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, IN NO EVENT WILL COHERENT'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR INDEMNITY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY BUYER TO COHERENT HEREUNDER FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION). THIS LIMITATION IS CUMULATIVE, WITH ALL PAYMENTS TO BUYER FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. NO CLAIM, SUIT OR ACTION WILL BE BROUGHT AGAINST COHERENT MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS TRANSPIRED.

(d) BUYER ACKNOWLEDGES THAT COHERENT HAS SET ITS PRICES AND FEES AND AGREED TO SELL PRODUCTS AND SERVICES TO BUYER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY,

DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES AND EXCLUSIVE REMEDIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH COHERENT WOULD NOT HAVE AGREED TO SELL PRODUCTS AND SERVICES TO BUYER. BUYER AGREES THAT SUCH PROVISIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

(e) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, COHERENT WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR EXCESS COSTS OF REPROCUREMENT.

## **20. BREACH.**

Any one of the following acts by Buyer will constitute a material breach of Buyer's obligations under these Terms: (a) Buyer fails to make payment for any Products or Services in full when due; (b) Buyer fails to accept conforming Products or Services supplied under these Terms; or (c) the filing of either a voluntary or involuntary petition in bankruptcy with respect to Buyer, Buyer's insolvency or inability, or admission in writing of its inability, to pay its debts generally as they become due, Buyer's application for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of a substantial part of its property, Buyer's initiation of an out of court restructuring or wind down, or Buyer's dissolution or liquidation in full or in part or an assignment for the benefit of creditors of Buyer. In the event of Buyer's material breach, Coherent may (in addition to any other rights or remedies provided herein or at law or in equity), by written notice to Buyer, terminate its obligations or any part thereof, without incurring any liability; provided, however, that with respect to a material breach due to subsection (c) above, such termination shall be automatic and effective without notice to Buyer. Buyer will pay all costs, including reasonable attorney's fees, incurred by Coherent in any action brought by Coherent to collect payments owing or otherwise enforce its rights.

## **21. SUBSTITUTIONS, MODIFICATIONS, AND CHANGES.**

Coherent will have the right to make substitutions and modifications at the specifications of Products or Services sold by Coherent if such substitutions or modifications will not materially degrade overall performance.

## **22. SAFETY-CRITICAL AND MILITARY APPLICATIONS**

(a) Unless expressly specified by Coherent in writing in the specifications for the applicable Product, Coherent Products are not designed for and will not be used in connection with any applications where the failure of such Products would reasonably be expected to cause significant personal injury or death ("**Safety-Critical Applications**") without the specific written consent of an officer of Coherent. Safety-Critical Applications include, without limitation, life support devices and systems, equipment or systems for the operation of nuclear facilities and weapons systems. Buyer will fully defend (at Coherent's option), indemnify and hold Coherent harmless from and against any cost, loss, liability, or expense arising out of or related to use of Coherent Products in Safety-Critical Applications.

(b) Coherent Products are neither designed nor intended for use in military or aerospace applications or environments unless specifically designated by Coherent as military-grade. Buyer acknowledges and agrees that any such use of Coherent Products which has not been designated as military-grade is solely at Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

## **23. GOVERNMENT END USER RIGHTS.**

All Products and Licensed Software were developed entirely at private expense and no part of the Products and Licensed Software was first produced in the performance of a Government contract. Accordingly, all Products and Licensed Software and any derivatives thereof are "**Commercial Items**" as defined in 48 C.F.R.

2.101. If the end-user is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Coherent commercial products and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Buyer may distribute the Products and Licensed Software to the U.S. Government or to U.S. Government end-users under U.S. Government contracts, if and only if, the Products and Licensed Software are licensed subject to these Terms. It is Buyer's responsibility to ensure that, consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.7102-3, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Products and Licensed Software are provided to U.S. Government end-users (i) only as Commercial Items, (ii) with only those rights as are granted to all other users pursuant to these Terms, and (iii) these Terms are incorporated into Buyer's contract with each Government end-user or otherwise agreed to by each Government end-user in a way that legally binds the U.S. Government to those terms. This Government End-User Rights clause is in lieu of, and supersedes, any Federal Acquisition Regulations ("FAR"), the Defense FAR Supplement ("DFARS"), or other clause or provision that addresses Government rights in computer software or technical data. Government procurement requirements and regulations will not be binding upon Coherent unless specifically agreed to by Coherent in a writing signed by an officer of Coherent.

## **24. GENERAL PROVISIONS**

(a) Buyer acknowledges that all or part of the Products may be developed, manufactured, tested, assembled or otherwise worked on, or delivered from any of Coherent's or its contractors' facilities, domestic, and foreign.

(b) Buyer agrees that it will comply with all applicable laws, regulations, and administrative rules. Without limiting the generality of the foregoing, Buyer represents itself to be knowledgeable as to United States, Canadian and other relevant laws, regulations and requirements

regarding the environment and the export, import or re-export of Products, whether tangible or intangible, from or to the United States of America, Canada or elsewhere, and agrees to conduct its activities in accordance with all applicable United States, Canadian and other environmental regulations and any similar or other rules, and import and export regulations. Coherent may suspend performance if Buyer is in violation of any applicable laws or regulations. Buyer will provide any additional documentation required by Seller for compliance with applicable laws.

(c) Buyer may not assign any of its rights or delegate any of its obligations under these Terms, whether voluntarily, by operation of law, or otherwise without Coherent's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. In addition, Buyer may not assign any of its rights or delegate any of its obligations to any entity controlled by, controlling or under common control with Buyer or in connection with Buyer's merger or the transfer or sale of all or substantially all of Buyer's assets or stock without Coherent's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. Coherent may assign its rights and/or delegate its obligations under these Terms upon written notice to Buyer. Subject to the foregoing, these Terms will bind each party and its respective successors and permitted assigns.

(d) Any waiver by Coherent of any right it may have or default by Buyer will not be deemed to be a continuing waiver of such right or default or a waiver of any other right it may have under these Terms or other default, nor will any delay or omission by Coherent in exercising or availing itself of any right or remedy that it has or may have operate as a waiver of any right or remedy. No waiver by Coherent will be effective except pursuant to a writing signed by a duly authorized representative of Coherent.

(e) Subject to any right of the Seller to the contrary set forth in these Terms, these Terms may not be superseded, cancelled, modified, or

amended except in a writing stating that it is such a modification and signed by an officer of each party. No other act, document, usage, or custom will be deemed to supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid, illegal, or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.

(f) These Terms, which include the documents incorporated by reference on the face of the quote provided by Seller (but expressly does not include any of the terms and conditions of Buyer's purchase order, specifications or any similar document issued by Buyer) will constitute the entire agreement between Buyer and Coherent with regard to the Products or Services sold under these Terms, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such Products or Services.

## **25. EXTENDED SERVICE CONTRACTS.**

In the event that Buyer is purchasing an extended service contract from Seller, such as Advantage Plus or Productivity Plus, then in addition to the

provisions of Sections 1-24 hereof, the following terms shall also apply: (a) Coherent's service contract will not cover (in addition to the exclusions set forth above under Section 9) any defect or damage resulting from (i) unauthorized components and accessories manufactured or provided by anyone other than Coherent, (ii) improper or inadequate maintenance, (iii) Buyer-supplied interfacing, (iv) operation outside the environmental specifications for the product, (v) improper site preparation and maintenance, (vi) unauthorized modification or misuse and (vii) damage as a result of external causes, such as force majeure type factors; (b) Replacement parts may be new or refurbished at Coherent's sole discretion; (c) Coverage shall only apply to the original purchaser of the Product at the physical location provided by the purchaser at the time such extended service contract is purchased; (d) Advantage Plus contracts may only be purchased in 12 month increments, up to a maximum of 36 months; and (e) Extended service contracts are non-refundable to the maximum amount allowed by law.