

TERMS AND CONDITIONS OF SALE

NUVOTRONICS, INC.

1. DEFINITIONS

"Buyer" means the entity purchasing the Products from Seller.

"EULA" means the End User License Agreement that governs Buyer's use of the Software.

"Order" means the contractual instrument under which Buyer purchases the Products from Seller and into which these Terms and Conditions and the EULA are incorporated.

"Product" means the software and/or hardware delivered by Seller to Buyer hereunder.

"Seller" means Nuvotronics, Inc. ("Nuvotronics") a wholly-owned subsidiary of Cubic Corporation

"Software" means any software that is embedded in the Products.

"Terms" shall mean these Terms and Conditions of Sale, which include the EULA for all Software.

2. FORMATION OF AGREEMENT BETWEEN BUYER AND SELLER

2.1 Without limitation, placing an Order (which is subsequently accepted by Seller) and/or accepting the Products shall signify acceptance of these Terms and shall override, supersede, and replace any other terms and conditions offered by the Buyer (including, but not limited to, any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification, or other document). Seller's acceptance of any Order for the supply of Products is expressly conditioned upon Buyer's acceptance of these Terms. Seller hereby rejects any other terms and conditions offered by Buyer and/or any Order that includes additional terms and conditions that conflict with these Terms in any manner.

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of an Order simply as a result of such document being referred or attached to the Order.

2.3 All quotation prices from Seller shall be valid for a period of thirty (30) calendar days.

2.4 Each Order or acceptance of a quotation for Products by Buyer shall be deemed to be an offer by Buyer to purchase the Products subject to these Terms and no other inconsistent or conflicting terms or conditions.

2.5 Each quotation / proposal from Seller to supply the Products to Buyer is expressly contingent on Buyer's acceptance of these Terms. If Buyer (a) does not accept these Terms as written in their entirety; or (b) attempts to include additional terms or conditions that are inconsistent or conflict with these Terms, Seller's quotation / proposal is hereby withdrawn and invalid.

2.6 No order placed by Buyer shall be deemed to be accepted by Seller unless and until a duly authorized representative of Seller has executed the Order in writing.

2.7 Buyer shall not reverse engineer the product. In addition, any other items which are marked as confidential, proprietary, or the like, shall not be disclosed to any third party and may be disclosed to only those employees of Buyer described above.

3. DESCRIPTIONS OF PRODUCTS; CANCELLATION OF ACCEPTED ORDERS

3.1 The quantity, nomenclature, description, and specifications of all Products shall be those set forth in the Order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures or on its website are issued or published or made available for the sole purpose of giving an approximate idea of the Products described therein. They shall not form part of an Order, and any sale pursuant to an Order shall not be a sale by sample.

3.3 Seller reserves the right to make: (a) any changes in the Products which are required in order for the Products to conform to any applicable safety or other statutory requirements; or (b) other changes in the Products that do not materially affect their quality or performance.

3.4 Buyer may not cancel an Order which Seller has accepted without Seller's prior, written consent. If Seller agrees to Buyer's request to cancel an already accepted Order, Buyer shall be liable for and reimburse Seller for all costs incurred by Seller as a result of such cancellation plus Seller's loss of reasonable profit.

4. DELIVERY AND PACKAGING

4.1 Delivery terms are F.O.B. Origin at Seller's facility for US domestic shipments. Delivery terms are Incoterms Ex Works Origin, FCA Origin or DAP for international shipment, depending on how shipping costs are paid.

4.2 Packaging shall be in accordance with commercial practices. Buyer shall pay for the costs of special packaging.

4.3 Seller may make partial and advance deliveries.

4.4 If Buyer causes a delay in delivery, Buyer shall pay Seller for the additional costs incurred.

4.5 Delivery dates are estimates. Seller shall notify Buyer if a scheduled delivery is expected to be delayed more than thirty (30) days. If Buyer requests, Seller shall arrange for shipment by premium transportation and, if the delay beyond thirty (30) days is not excused (e.g., due to a force majeure, condition precedent), Seller shall pay the additional shipping cost. Such shipment by premium transportation is Seller's only obligation and liability for delay in delivery.

4.6 IN NO EVENT SHALL SELLER BE LIABLE TO RESELLER FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHERWISE, FOR FAILURE TO FILL ORDERS, DELAYS IN SHIPMENT OR DELIVERY, OR ANY ERROR IN THE FILING OF ORDERS, REGARDLESS OF THE CAUSE THEREFOR. IN THE EVENT OF PRODUCT SHORTAGES, SELLER SHALL HAVE THE RIGHT TO ALLOCATE THE AVAILABLE SUPPLY TO ITS RESELLER ON A CASE-BY-CASE BASIS, IN A MANNER DEEMED EQUITABLE BY SELLER UNDER THE PARTICULAR CIRCUMSTANCES.

5. RISK OF LOSS; TRANSFER OF TITLE

5.1 Title to the Products shall pass to Buyer, and Buyer shall bear all risks of loss, upon Seller making the Products available to Buyer's carrier at Seller's facility.

5.2 Seller shall retain title to all Software. Buyer's use of the Software shall be governed by and in accordance with the EULA.

5.3 Seller also shall retain all rights, title, and interest to all patents, patents pending, copyrights, trade secrets, trade dress, trade names, trademarks, service marks, service names, ideas, know-how, intellectual property, and the like pertaining to or associated with the Products and the Software.

6. PRICES AND PAYMENT

6.1 Prices and payments shall be in U.S. Dollars, unless otherwise agreed to by Seller, and exclude all federal, state, and local sales taxes, manufacturer's and retailer's excise taxes, value added taxes, duties, and/or use taxes, all of which shall be paid by Buyer.

6.2 Seller shall invoice for all Products at the time they are shipped to Buyer.

6.3 Buyer shall remit payment to Seller on a Net 30 basis to the address on each invoice or via wire transfer, electronic funds transfer or ACH to the following account:

Nuvotronics, Inc.

Bank: U.S. Bank N.A.
ABA#: 122 235 821
Swift: USBKUS44iMT
Account #: 157535974313

6.4 Buyer shall make all payments due under the Order in full without any deduction whether by way of set-off, counter-claim, discount, abatement, or otherwise unless the Buyer has a valid court order requiring such deduction to be paid by Seller to Buyer.

6.5 Past due amounts shall be subject to interest at ten (10) percent per annum.

7. ACCEPTANCE

Acceptance shall be at Seller's facility and will be in accordance with Sellers' standard test procedures (ATP) for the item ordered. Buyer shall properly inspect the Products upon their arrival and, within thirty (30) days thereafter, shall provide written notice to Seller of any claim that the Products do not materially conform to the specifications set forth in the Order. If Buyer fails to notify Seller in writing of any perceived non-conformities within those thirty (30) days, Buyer will be deemed to have accepted the Products and to have waived all rights to revoke acceptance.

8. PRODUCT WARRANTY / LIMITATIONS / EXCLUSIONS

8.1 Seller limitedly warrants that its delivery items shall, for twelve months after delivery (the "Warranty Period"), materially conform with: (1) the written specifications set forth in the Order; or (2) in the case of off-the-shelf products, the published specifications for such products. This limited warranty is in favor of Buyer, and the end user(s) listed on the End User Statement only and is non-transferable. To make a warranty claim, Buyer or the end user must provide written notice to Seller or their written designees, within ten days after any such non-conformity is observed, otherwise this limited warranty is vitiated. Seller's sole liability under any valid written warranty claim shall be to attempt resolution of the alleged non-conformity, or at Seller's option, partial refund to Buyer (but not an end user) of the pro rata value of the line-item price paid for the non-conforming item based on a six-month life expectancy. In making a warrantee claim, Buyer or an end user shall await written instructions from Seller or their written designees, and shall otherwise take no action with respect to using or shipping of the alleged non-conforming item(s). Should Buyer or end user be

instructed to ship and package the alleged non-conforming items, the same shall be at Buyer's or end user's expense, except that if a valid non-conformity is found by Seller, then Seller shall reimburse Buyer for such costs. Products evaluated and found to be operating satisfactorily are subject to a \$3000.00 USD minimum service charge and the associated shipping costs and will be returned to Buyer within ten (10) days after such evaluation. Failure to strictly adhere to this provision shall vitiate this limited warranty. The twelve-month term of this limited warranty shall be extended for any deliverable which is found by Seller to be materially non-conforming for the duration of time it takes Seller to resolve or refund partial payment for the line-item of any such non-conformity.

8.2 THE SOLE OBLIGATION OF SELLER, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR BREACH OF THIS WARRANTY IS FOR SELLER, AT ITS OPTION, TO REPAIR OR REPLACE THE DEFECTIVE PRODUCT AT NO COST TO BUYER. IN NO CASE SHALL SELLER'S LIABILITY EXCEED THE BUYER'S PURCHASE PRICE FOR THE PRODUCT IN QUESTION. Buyer must return defective Products to Seller, with shipping labels and prepaid shipping provided by Seller. Seller shall warrant all repaired or replaced Products for the remainder of the Warranty Period associated with the original Product or for a period of ninety (90) days, whichever is longer.

8.3 EXCEPT AS SPECIFIED ABOVE IN ARTICLE 8.1, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY SELLER AND ITS SUPPLIERS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD REFERRED TO IN ARTICLE 8.1 ABOVE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY IN SUCH STATES. THIS WARRANTY GIVES BUYER SPECIFIC LEGAL RIGHTS, AND BUYER ALSO MAY HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

Disclaimer of Liabilities-Limitation of Liability. IF BUYER ACQUIRED THE PRODUCTS IN THE UNITED STATES, LATIN AMERICA, CANADA, JAPAN OR THE CARIBBEAN, NOTWITHSTANDING ANYTHING ELSE IN THE ORDER TO THE CONTRARY, ALL LIABILITY OF SELLER, ITS PARENT COMPANY, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS COLLECTIVELY, TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL ORDER PRICE PAID BY BUYER TO SELLER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT).

Disclaimer of Liabilities-Waiver of Consequential Damages and Other Losses. IF BUYER ACQUIRED THE PRODUCTS IN THE UNITED STATES, LATIN AMERICA, THE CARIBBEAN OR CANADA, REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL SELLER OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA,

BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS OR OTHERWISE AND EVEN IF SELLER OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO BUYER.

Buyer acknowledges and agrees that Seller has set its prices and entered into the Order in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the Parties.

8.4 The warranty set forth above in Article 8.1 is subject to the proper use and maintenance of the Product and is voided by, and/or does not apply to, the following: (a) Product that has been tampered with (tamper seals broken), mishandled, altered, damaged or rendered inoperable due to willful or negligent acts or omissions, accident, Force Majeure, or operated in an environment outside the recommended tolerances as specified in the Product User Manual; (b) Product that has been disassembled in any way, reconfigured or modified without Seller's prior, written consent; (c) Product that has been serviced by any person or group other than an authorized Seller representative; (d) Product that has been damaged during transit; (e) Product that has become inoperable or fails to operate properly as a result of a power surge or any other power fluctuation related to the external power source used to power the Product; (f) Use of any replacement parts and/or components not provided by Seller, including, without limitation, disk drives, electrical cords, network cords, telephony cords, antenna cords or any hardware components attached to the product; (g) Any use of the Product in a manner that is inconsistent with the Product's intended operational capabilities; (h) Any commercial component that is covered under the original manufacturer's warranty; (i) Degradation, damage, or marring of any product finish; or (j) Any damage, loss, liability, or expense resulting from unavailability, delay, interruption, disruption, or degradation of network or communications services.

8.5 The Warranty Period begins upon shipment of the Product from Seller's facility.

8.6 Seller will provide shipping labels and prepaid shipping to return the Product to its facility. Seller will pay normal and reasonable costs for the return of the Product to the Buyer. Return shipment will utilize the "Best Way" method, and is solely at Seller's discretion. Costs for expedited return shipping, if requested, shall be the responsibility of Buyer. Normal turnaround time for warranty repairs is fifteen (15) working days, commencing the day after the Product is received at Seller's facility.

8.7 Out-of-Warranty Repairs. Out-of-warranty repairs are warranted for ninety (90) days from the date of return shipment. Replacement parts are warranted for thirty (30) days. If Buyer receives an estimate and subsequently elects not to have repair work completed, there shall be a service charge applied for the evaluation required to prepare the estimate. Products left in Seller's possession thirty (30) days after Seller's quotation of charges, without notice of disposition from Buyer, are subject to a stocking and handling charge.

9. TERMINATION; EXCUSABLE DELAY

9.1 Either Party may terminate this Order for default by written notice to the other Party if: (a) the other Party (in such case, the "Breaching Party") fails to deliver / perform its material obligations within the time specified in the Order or any written extension and does

not cure the failure within ten (10) calendar days after receipt of written notice from the Non-Breaching Party specifying the failure or, fails to provide an acceptable cure plan to the Non-Breaching Party within ten (10) calendar days after receipt of written notice from the Non-Breaching Party; or (b) in the event the other Party declares bankruptcy, suspends its business operation, or initiates any reorganization and/or arrangement for the benefit of its creditors.

9.2 Notwithstanding any other provision herein (including, but not limited to, Article 9.1 above), a Party shall not be liable for failure to perform any of its obligations due to causes beyond its reasonable control. Such causes shall include, but are not be limited to, fire, flood, earthquake, or other natural disaster, utility disruption, war, rebellion or insurrection, terrorist act, riot, civil disturbance, embargo, the intervention of any governmental authority, strikes (regardless of the characterization thereof), labor slowdowns, walkouts, and/or shortages, material shortages, shortage of transport, and failures of suppliers to deliver material and components in accordance with the terms of their contract(s).

9.3 This remedy shall not be exclusive, and in the event that Seller terminates this Order on account of default by Buyer pursuant to either Article 9.1 or Article 9.2, Buyer shall pay Seller a re-stocking fee equal to 20% of the items that remain undelivered under the subject purchase order at the time of the default by the Buyer. Seller reserves the right to pursue all other remedies.

10. PATENT INDEMNIFICATION

Seller agrees to indemnify, defend, and hold Buyer and its customers harmless from any and all third-party claims to the extent that such claim alleges that the Products provided by Seller hereunder infringe any intellectual property right of a third party. Buyer shall duly notify Seller of any such claim, suit, or action. Seller shall, at its own expense, fully defend such claim, suit, or action on behalf of the indemnitees. If Seller's Products become, or in Seller's opinion are likely to become, the subject of any infringement claim, Seller may, at its sole option and expense, either (a) procure for Buyer the right to continue using the Products; or (b) replace or modify the Products so they become non-infringing. The foregoing indemnification provisions are Buyer's sole and exclusive remedy, and Seller's entire liability, for any claims of infringement with respect to the Products provided by Seller to Buyer hereunder. Notwithstanding the foregoing paragraph, when this Order is performed under the Authorization and Consent of the U.S. Government to infringe U.S. patents, Seller's liability for infringement of such patents in such performance shall be limited to the extent of the obligation of Buyer to indemnify the U.S. Government.

11. ASSIGNMENT; SUBCONTRACTING; BINDING EFFECT

Seller may unilaterally assign, novate, or otherwise transfer its rights and obligations under this Order to its (a) its parent company or any wholly-owned subsidiary thereof, provided that such parent company or wholly-owned subsidiary thereof has a valid need-to-know for the Purpose; (b) a successor in connection with a merger, acquisition, or consolidation; or (c) the purchaser of all or substantially all of its assets, with timely, written notice to the other party. Other than the foregoing, neither Party may assign any portion of this Order without the express written consent of the other Party. Any such assignment, novation, or transfer by a Party not in accordance with this provision shall be a material breach of this Order and shall be grounds for immediate termination thereof by the non-breaching Party, in addition to any other remedies that may be available at law or in equity to the non-breaching Party. Seller reserves the right to enter into subcontracts with qualified vendors for the manufacture or provision of any items required by Seller to meet its performance obligations hereunder. This Order shall inure to the benefit of and shall be binding upon the valid successors and assigns of the Parties.

12. EXPORT / RE-EXPORT / TRANSFER / USE CONTROLS

12.1 The Products may be subject to export controls under the laws and regulations of the United States. Buyer shall comply with such laws and regulations governing export, re-export, import, transfer

and use of the Products and will obtain all required authorizations, permits, or licenses. Buyer and Seller each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

12.2 Buyer agrees that it will not use the Products for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity, nor will they be re-sold if it is known or suspected that they are intended to be used for such purposes or to be diverted to any destination subject to international sanctions or embargoes.

12.3 In the event of Buyer's non-compliance with this Article 12, Buyer shall indemnify and hold Seller, its parent company, its affiliates, officers, directors, employees, agents, suppliers, and licensors harmless from any claims, actions, penalties, damages, costs, and all other liabilities related to, arising from or out of such non-compliance or any actions or omissions related thereto.

13. SEVERABILITY

If any material condition or provision herein contained is held to be invalid, void, or unenforceable by a final judgment of any court of competent jurisdiction, then the remaining provisions of this Order shall remain in full force and effect.

14. GOVERNING LAW

This Order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflicts of laws provisions. The United Nations Convention on the International Sale of Goods shall not apply to this Order.

15. ETHICAL CONDUCT

Each Party hereby certifies that it has and will continue to comply with all applicable anti-bribery, anti-corruption, and procurement integrity laws and regulations (including, but not limited to, the United States Foreign Corrupt Practices Act and the U.K. Bribery Act) in all matters pertaining or related to the subject matter of this Order.

16. RESOLUTION OF DISPUTES

All disputes arising out of or related to this Order shall be subject to the exclusive jurisdiction and venue of the state and federal courts located in either the Circuit Court of Fairfax County, Virginia, or the U.S. District Court for the Eastern District of Virginia, Alexandria Division, and the Parties hereby consent to such exclusive jurisdiction and venue. The Parties hereby waive trial by jury with respect to any dispute relating to this Order.

17. CONTROLLING LANGUAGE

All data, reports, documents, manuals, communications, and the like, required hereunder shall be in the English language.

18. NO THIRD-PARTY BENEFICIARY

No person or entity shall be deemed to be a third-party beneficiary hereof.

19. WAIVER

The exercise by Seller of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. A failure or delay by Seller in exercising any right, privilege, or remedy shall neither operate as a waiver thereof nor modify the terms of this Order, nor shall any single or partial exercise by Seller of any right, privilege, or remedy preclude any other further exercise of the same or of any other right, privilege, or remedy.

20. NOTICES

Any notices, authorizations, or other communications of a contractual, legal, or administrative nature (collectively, "Notices") under or in connection with this Order shall be in writing and delivered by reputable courier, facsimile, or PDF e-mail. Notices shall be deemed

to have been given when received by the Party to whom the communication is directed and shall be addressed as follows:

To Seller:

Nuvotronics, Inc.
Attn: Contracts
2305 Presidential Drive
Durham, NC 27703
Phone: 919-646-4341
E-Mail: contracts@nuvotronics.com

21. HEADINGS

The titles or headings of the various Articles and sub-paragraphs hereof are intended solely for convenience or reference and are not intended and shall not be deemed to modify or explain any of the provisions of this Order.

22. ORDER OF PRECEDENCE

Any inconsistencies in this Order shall be resolved by giving precedence in the following descending order: (a) these Terms; (b) the EULA; (c) the face of the Order; and (d) and other documents, exhibits, or attachments (e.g., specifications).

23. COMPLETE AGREEMENT

23.1 This Order (including these Terms and the EULA) contains the entire understanding between the Parties relative to the subject matter hereof and supersedes all prior and collateral communications, reports, and understandings between the Parties in respect thereto.

23.2 Except as provided herein, this Order shall not be varied except by an instrument in writing of subsequent date duly executed by the authorized representatives of the Parties set above in Article 20.

23.3 Each Party acknowledges to the other that it has not been induced to enter into the Order by nor has it relied upon any representation, promise, assurance, warranty, or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in the Order. Accordingly, each Party acknowledges and agrees that the only remedy available to it in respect of the subject matter of the Order shall be for breach of contract under the terms of the Order, and it shall have no right of action against any other party in respect of any such representation, promise, assurance, warranty, or undertaking.

24. U.S. GOVERNMENT END USER

Any provision, and only those provisions, determined to be inconsistent with Federal procurement law shall not apply. All other provisions shall remain in full force and effect.