



## modular rf

### Terms and Conditions of Sale

For purposes of these terms and conditions of sale, the term "contract" shall mean the agreement between AR Modular RF and Buyer arising as a result of Buyer's submission of an order for any Product offered for sale by AR Modular RF or component thereof and AR Modular RF' acceptance of said order. AR Modular RF' acceptance of Buyer's purchase order is expressly made conditional on Buyer's assent to these Terms and Conditions, which shall be conclusively presumed from Buyer's failure to object reasonably in writing. Any modification to these Terms and Conditions must be agreed to and executed in writing by an authorized officer of AR Modular RF. Retention by Buyer of any equipment or software (which collectively are hereinafter sometimes called "Product") delivered by AR Modular RF hereunder shall be conclusively deemed acceptance of the Terms and Conditions herein. AR Modular RF' failure to object to provisions contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions of Sale nor as an acceptance of any such provision.

**1. Quotations:** Only a written quotation of prices for a Product shall constitute AR Modular RF' Quotation there under and shall expire on the expiration date indicated on said Quotation, or if no date is specified, then thirty (30) days after the date of the Quotation. Each and every Quotation of AR Modular RF is subject to these Terms and Conditions of Sale and fully incorporates them as a part hereof.

**2. Orders and Acceptance of Orders:** By submitting an order to AR Modular RF, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bona fide commitments showing definite prices and requested shipping dates, together with stipulated quantities and complete description. No order or other commitment shall be binding upon AR Modular RF, unless and until such an order or other commitment is accepted in writing by an authorized Officer of AR Modular RF at its principal office in Washington. Said written acceptance of order shall include an estimated date of shipment of the Products ordered by the Buyer.

**3. Taxes:** Prices do not include federal, state or local sales, use or other taxes, now or hereafter enacted, unless otherwise specifically stated herein, applicable to the Product sold in this transaction, and which taxes will, in any event, be paid by Buyer unless Buyer provides AR Modular RF with a proper tax exemption certificate. Should Buyer fail to pay any such taxes and any taxing authority seeks to collect such taxes from AR Modular RF, Buyer agrees to indemnify AR Modular RF and hold it harmless from any such tax and all interest and penalties related thereto. AR Modular RF may, at its discretion, add such taxes to the sales price or bill for such taxes separately.

**4. Prices:** Prices of Products delivered there under shall be pursuant to a valid Quotation or written confirmation from AR Modular RF, or separate contract between Buyer and AR Modular RF.

**5. Shipments:** All Products will be shipped F.O.B. AR Modular RF' plant in Bothell, Washington. In the absence of specific instructions, AR Modular RF will select the carrier and, at its discretion, ship "collect" or prepaid, but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of AR Modular RF. Buyer must provide its own insurance. Title and risk of loss or damage to the Products shall pass from AR Modular RF to Buyer upon delivery by AR Modular RF to the possession of the carrier. Any claims for loss or damage or misdelivery shall be filed with the carrier.

**6. Delivery Dates:** The estimated shipping schedule stated in AR Modular RF' Quotation or in AR Modular RF' Acceptance of Buyer's order does not constitute a commitment to deliver Products in accordance therewith. AR Modular RF will use reasonable efforts to ship on or before the estimated shipping dates indicated.

**7. Terms and Method of Payment:** All payments are to be made in U.S. dollars. Terms and method of payment will be as specified in the individual Equipment Quotation or on the Order acceptance. Methods of payment may vary as determined by.

- Extension of credit, with or without specific limitations, by AR Modular RF to Buyer.
- Character of the equipment ordered (*specifically, Instruments versus Systems*),
- Dollar amount of the order, and
- Whether shipment is to a destination within the continental USA or outside the continental USA.

The amount of credit or terms of payment may be changed or credit withdrawn by AR Modular RF at any time. If Buyer fails to pay the price when due, AR Modular RF may recover, in addition to the price, interest thereon at the rate of 1 ½ % per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable attorney's fees.

**8. Security Interest:** Buyer hereby grants to AR Modular RF a Uniform Commercial Code security interest in Products delivered to buyer as security for the performance by buyer of all of its obligations there under. Buyer agrees to execute such documents to evidence and perfect said security interest as AR Modular RF may require. Buyer hereby appoints any officer of AR Modular RF as its duly authorized agent for the purpose of executing all such documents on Buyer's behalf, including, without limitation, the form UCC-1, and for the purpose of taking any and all other action deemed necessary by AR Modular RF, in its sole discretion, for the perfection and enforcement of the security interest granted hereby.

**9. Contingencies:** AR Modular RF shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of AR Modular RF or AR Modular RF' suppliers, including by way of illustration but not limitation, war (*whether an actual declaration thereof is made or not*), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure

where AR Modular RF has exercised ordinary care in the prevention thereof. If any contingency occurs, AR Modular RF may allocate production and deliveries among AR Modular RF' customers.

### 10. Substitutions and Modifications of Equipment.

**A. Equipment Manufactured by AR Modular RF:** AR Modular RF may modify the specifications of equipment designed and manufactured by AR Modular RF and incorporated into the Product, provided the modifications do not adversely affect the performance of the equipment. Equipment may be newly manufactured or assembled by AR Modular RF from new parts or from serviceable used parts, which are equivalent in performance to new parts in such equipment. In addition, AR Modular RF may furnish suitable substitutes for materials unobtainable because of priorities, or regulations established by government authority, or non-availability of materials from suppliers.

**B. Equipment Not Manufactured By AR Modular RF:** With respect to any equipment not manufactured by AR Modular RF, AR Modular RF agrees to use reasonable efforts to notify Buyer of any equipment modifications made by the manufacturer of such equipment and of which AR Modular RF has received notice. If authorized by the manufacturer, AR Modular RF shall modify, at the manufacturer's expense, such equipment, as is returned to it by Buyer (*at Buyer's expense*) for modification.

**11. Software:** The term Software shall refer to all software and firmware programming routines and documentation thereof supplied by AR Modular RF or the manufacturer for use with the Product, whether or not such Software was separately priced. AR Modular RF or the manufacturer, as the case may be, shall at all times have title to and full ownership of all Software supplied by AR Modular RF with the product. AR Modular RF grants to Buyer a fully paid License to use the Software with the Product.

Buyer shall have the right to make copies of the Software in any human or machine-readable form only to the extent necessary for the efficient use of the Product.

Buyer shall not remove any statutory copyright notice included in the Software furnished to Buyer and shall reproduce all such notices on all copies of any form including revised, modified, or translated version made by Buyer, unless otherwise directed by AR Modular RF in writing.

Buyer shall limit use and access of all Software provided with the Product, and copies thereof, to such of Buyer's employees as are directly involved in the operation and maintenance of the Product. Buyer shall require its employees to make no disclosure of such Software or copies, which is not directly connected with the operation and maintenance of the Product.

The rights and licenses granted to Buyer with respect to any Software provided with the Product may not be assigned or transferred to another party without the prior written consent of AR Modular RF, except that such rights and licenses may be assigned or transferred upon the transfer of the Product to which such rights and licenses apply, provided that AR Modular RF is furnished a written acceptance of the transferee's agreement to assume and comply with any all obligations of Buyer with respect to such Software.

When Buyer no longer desires to use the Software, Buyer shall notify AR Modular RF in writing and destroy all copies thereof.

### 12. Warranties:

**A. Equipment Manufactured By AR Modular RF:** AR Modular RF warrants that the equipment manufactured and sold by it shall conform to AR Modular RF specifications and shall be free from defects under normal use in material and workmanship for a period of one year from date of invoice, except with respect to equipment or components thereof for which a different warranty period or service life is specifically identified in AR Modular RF' published price list in effect upon receipt of Buyer's order or in the applicable Product brochure, or in the quotation furnished by AR Modular RF to Buyer, in which event, such warranty period or service life shall apply. If the equipment or any components covered by this warranty shall be returned to the original shipping point, transportation charges and all other charges including but not limited to custom duties, insurance, etc., prepaid, and double boxed or packed in other suitable manner, within one year (*or during the applicable warranty period or service life as herein before referred to*) from date of invoice and upon examination AR Modular RF determines to its satisfaction that the equipment or such components are defective in material or workmanship and such defect was not caused by accident, misuse, neglect, alteration, improper installation, repair, improper testing, or by improper packing for return, AR Modular RF shall at its option (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any custom duties and/or import fees etc., which shall be Buyer's responsibility, or (2) credit the account of Buyer for the original cost of the equipment plus original transportation charges. If AR Modular RF elects to repair or replace the defective parts, AR Modular RF shall have a reasonable time to make such repairs or replace such parts.

AR Modular RF shall not be responsible for failure of the equipment to perform specified functions or any other non-conformance caused by or attributable to, (a) any associated or complimentary equipment or software not furnished by AR Modular RF, (b) misuse, neglect or abuse of, or accident to, the Product, (c) exposure of the Product to conditions beyond the environmental, power and operating constraints specified by AR Modular RF, or (d) installation or wiring practices not in accordance with those recommended by AR Modular RF.

**B. Equipment Not Manufactured By AR Modular RF:** AR Modular RF makes no warranties (*INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE*) with respect to equipment sold to Buyer by AR Modular RF and not manufactured by AR Modular RF. AR Modular RF agrees to assign the manufacturer's warranty, to the extent permitted, to Buyer upon Buyer's purchase of the manufacturer's equipment from AR Modular RF.

All requests for service under the manufacturer's warranty shall be made to AR Modular RF in writing setting forth in reasonable detail a description of the alleged defect or malfunction. If the equipment (*or parts thereof*) covered by the manufacturer's warranty are returned to AR Modular

RF, transportation charges and all other charges including but not limited to custom duties, insurance, etc., prepaid, double boxed or packed in other suitable manner, within two years from receipt at destination, and upon examination AR Modular RF determines that service should be performed under the manufacturer's warranty, AR Modular RF will, in its sole discretion and without liability, either (1) repair or replace the equipment (or parts thereof) at the manufacturer's expense, or (2) return to the manufacturer the equipment (or parts thereof) for repair or replacement. In the event that AR Modular RF elects to repair or replace the equipment (or parts thereof), or if the equipment is returned to the manufacturer for repair or replacement, AR Modular RF or the manufacturer, as the case may be, shall have a reasonable time to make such repairs or replace such equipment (or parts thereof). All service provided by AR Modular RF there under shall be "in factory".

In the event that AR Modular RF determines that service should not be performed under the manufacturer's warranty, Buyer must apply to the manufacturer for service in accordance with the terms and condition of the manufacturer's warranty.

AR Modular RF shall provide out-of-warranty service on the manufacturer's equipment (or parts thereof) only pursuant to a service contract or purchase order executed by it and Buyer.

**C. AR Modular RF Software:** If, at any time during the period ending two years after delivery of the Software to the Buyer with respect to any Product manufactured by AR Modular RF, Buyer shall report and document any error in the Software or any failure of the Software substantially to conform to AR Modular RF software description that limits or prevents use of the Software by Buyer, AR Modular RF agrees to use its reasonable efforts to correct any such error or failure, but AR Modular RF does not warrant that the Software is free from defects or that all defects can be corrected; provided, however, that this warranty shall apply only to those portions of the Software, or its replacement, that incorporated all program corrections and modifications, if any, delivered to Buyer; and provided further that this warranty shall not apply to any error or failure due to the misuse or negligence of any person other than AR Modular RF and shall not apply to any Software which has been modified by any person other than AR Modular RF.

**D. Manufacturer's Software:** AR Modular RF makes no warranties (INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) with respect to Software licensed to Buyer by AR Modular RF and not proprietary to AR Modular RF. AR Modular RF agrees to assign the manufacturer's warranty covering such Software, to the extent permitted, to Buyer.

**E. AR MODULAR RF SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS AND ANY DEFECTS THEREIN OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AR MODULAR RF'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE PRODUCTS, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE AS SET FORTH IN THIS SECTION 12.

In any event, no equipment will be accepted for repair, replacement or credit without a specific Return Authorization ("RA") Number furnished by AR Modular RF in advance of the return shipment.

**13. Conditions of Warranties:** Upon the occurrence of any default by Buyer in payment of any portion of the purchase price when due, all warranties and all obligations of AR Modular RF to service the Product or components delivered by AR Modular RF to Buyer whether under this transaction or otherwise shall terminate.

**14. Patents:** AR Modular RF will defend Buyer and pay any award of damages assessed against Buyer in any suit or proceeding against Buyer, so far as the same is based on any claim that the product or any part thereof furnished there under (except for equipment basically of Buyer's specifications or not manufactured by AR Modular RF) shall in design or construction directly infringe any United States patent, provided Buyer gives AR Modular RF prompt notice in writing of such claim and permits AR Modular RF to contest same through its counsel or, at its option, to settle same by securing for Buyer the right to use the Product, or by modifying it to avoid infringement or by reclaiming it and replacing it with a non-infringing Product or to grant Buyer a credit for the then value of the product, as depreciated at the rate of one-fifth (1/5) of the price per year, but not below one-fifth (1/5) of the price, and accept its return; and provided Buyer gives AR Modular RF all necessary authority and assistance, at AR Modular RF expense, to enable AR Modular RF to do so.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF AR MODULAR RF FOR PATENT INFRINGEMENTS AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED, IN REGARD THERETO.

**15. Proprietary information:** Certain equipment documentation, Software and computer applications and other information to be furnished to Buyer constitutes Proprietary Information of AR Modular RF or of a manufacturer of the Product sold by AR Modular RF to Buyer. With respect of such information, Buyer, by submitting an order for Products which is accepted by AR Modular RF, agrees as follows:

**A. Definition:** "Proprietary Information" of AR Modular RF or of manufacturer, as the case may be, shall mean information and data, which is in written, graph or machine-readable form and marked proprietary. Where alternative forms of information are received from AR Modular RF, such information shall be considered proprietary information if at least one of said forms is marked proprietary.

**B. Conditions:** Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, including binding agreements with employees to prevent unauthorized publication, disclosure or use of such information. Buyer shall not disclose Proprietary Information to any third party and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by AR Modular RF or the manufacturer, as the case may be.

**C. Exclusions:** Buyer shall incur no obligation there under with respect to information in the Buyer's possession prior to receipt from AR Modular RF of information which is or becomes available to the public or becomes general knowledge in the industry, other than through the fault of Buyer.

**16. Termination:** Orders accepted by AR Modular RF may be canceled by Buyer; only with the written consent of AR Modular RF (which consent AR Modular RF may withhold) and upon payment of reasonable cancellation charges.

AR Modular RF shall have the right to cancel any order placed, or to refuse, or to delay, the shipment thereof for failure of Buyer to promptly meet payments due AR Modular RF, or any other reasonable requirements established by AR Modular RF, or for any acts or omissions of Buyer that delay AR Modular RF performance.

In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer, voluntarily or involuntarily, under any provision of the Bankruptcy Act or any insolvency law, AR Modular RF shall be entitled to cancel any order then outstanding, at any time during the period allowed for filing claims against the estate, and shall receive reimbursements for its reasonable and proper cancellation charges.

**17. Non-Waiver of Default:** In the event of any default by Buyer, AR Modular RF may decline to make further shipments. If AR Modular RF elects to continue to make shipments, AR Modular RF action shall not constitute a waiver of any default by Buyer or in any way affect AR Modular RF legal remedies for any such default.

**18. Applicable Law:** The validity performance and construction of this contract shall be governed by the substantive law of Washington, U.S.A.

**19. Government Contracts:** If the product to be furnished under this contract is to be used in the performance of a Government contract or subcontract, the Government contract number and a statement to this effect shall appear on Buyer's purchase order, and in such event those clauses of the applicable government procurement regulation which are mandatory required by Federal Statute to be included in Government subcontracts shall be incorporated herein by reference, including, without limitation, the Equal Opportunity clause specified in 41 CFR Section 60-1.4 the Affirmative Action For Disabled Veterans and Veterans of the Viet Nam era clause specified in 41 CFR Section 60-250.4, and the affirmative Action For Handicapped Workers clause specified in 41 CFR Section 60-741.4.

#### 20. Export Control:

a) Buyer agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C.2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Buyer agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Buyer or Buyer's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

b) Buyer agrees to notify AR Modular RF if any deliverable under this Contract is restricted by export control laws or regulations.

c) Buyer shall immediately notify the AR Modular RF Procurement Representative if Buyer is, or becomes, listed in any Denied Parties List or if Buyer export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

d) If Buyer is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Buyer represents that it is registered with the Office of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

e) Where Buyer is a signatory under a AR Modular RF export license or export agreement (e.g., TAA, MTA), Buyer shall provide prompt notification to the AR Modular RF Procurement Representative in the event of changed circumstances including, but not limited to, ineligibility, a violation or potential violation of the ITAR, and the initiation or existence of a U.S. Government investigation, that could affect the Buyer's performance under this Contract.

f) Buyer shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Buyer, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

**21. Assignment:** This contract shall be binding upon and inure to the benefit of the parties and the successor and assigns of the entire business and goodwill of either AR Modular RF or Buyer or of that part of the business of either used in the performance of this contract, but shall not be otherwise assignable.

**22. Complete Agreement; Modifications:** This contract constitutes the entire agreement between the parties relating to the sale of the Product described on the face hereof and no addition to or modification of any provision upon the face of this contract shall be binding upon AR Modular RF unless made in writing and signed by an authorized officer of AR Modular RF located in Washington.

**23. Notice:** All notices given there under shall be in writing, mailed first class, certified or registered, or delivered by hand to the address as such party may designate from time to time by such notice, and shall take effect (a) when mailed or (b) when received if delivered by hand.

**24. Remedies:** All AR Modular RF rights and remedies whether evidenced hereby or by any other agreement, instrument, or paper shall be cumulative and may be exercised singularly or concurrently.