Terms and Conditions of Sale

For purposes of these terms and conditions of sale, the term “Contract” shall mean the agreement between AR Kalmus Corp, DBA AR Modular RF (“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’s acceptance of said order. AR Modular RF’s acceptance of Buyer’s purchase order is expressly made conditional on Buyer’s assent to these terms and conditions of sale (the “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 (collectively, “Product”) delivered by AR Modular RF hereunder shall be conclusively deemed acceptance of the Terms and Conditions herein. AR Modular RF’s failure to object to provisions contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

1. Quotations: Only a written quotation of prices for a Product shall constitute AR Modular RF’s Quotation thereunder 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 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.

In the event of a return by the Buyer, a restocking fee may be applied at the discretion of AR Modular RF.

3. Taxes: Prices do not include federal, state or local sales, use or other taxes, row 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 hereunder 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’s 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, and Buyer shall remain responsible for all costs of transportation from the point of shipment. 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 point of possession of the carrier. Any claims for loss or damage or mis-delivery shall be filed with the carrier.

6. Delivery Dates: The estimated shipping schedule stated in AR Modular RF’s Quotation or in AR Modular RF’s 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 specified in the individual Equipment Quotation or on the Order acceptance. Methods of payment may vary as determined by:

a) Extension of credit, with or without specific limitations, by AR Modular RF to Buyer.

b) Character of the equipment ordered (specifically, Instruments versus Systems),

c) Dollar amount of the order, and

d) 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 hereunder. Buyer agrees to execute such documents to evidence and perfect such 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 acknowledging this security interest, 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 of either AR Modular RF or AR Modular RF’s 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 Product is rejected, AR Modular RF may allocate production and deliveries among AR Modular RF’s 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 parts, which are equivalent in performance to the 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 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 have the right to 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 Software 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.

a) New Equipment. AR Modular RF warrants to Buyer that the new equipment manufactured and sold by it (directly or through its authorized resellers and distributors) to Buyer shall conform to AR Modular RF Specifications for that equipment and shall be free from defects under normal use in material and workmanship for the period of thirty (36) months from the date of the original sales invoice for that equipment (the “New Equipment Limited Warranty”), except with respect to equipment (or components thereof) for which a different warranty period is specifically identified by AR Modular RF to that equipment, including in its 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 different warranty period shall apply. The New Equipment Limited Warranty is limited to new equipment manufactured, and work performed at AR Modular RF by AR Modular RF employees, but includes components purchased by AR Modular RF and installed by AR Modular RF in the equipment.

If within thirty-six (36) months from the date of the original sales invoice (or within the different warranty period provided for in the immediately preceding paragraph), AR Modular RF receives written notification (in accordance with these Terms and Conditions) of the New Equipment Limited Warranty claim for that equipment, and within that period the equipment or any component covered by this New Equipment Limited Warranty are returned to AR Modular RF at the original shipping point, with transportation charges and all other charges including, but not limited to, customs duties and insurance prepaid, and double boxed or packed in other suitable manner, 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 or other warranty exclusion set forth in Section 12(E), below, AR Modular RF shall at its option: (1) repair or replace the defective parts and ship to Buyer, excluding any customs duties and/or import fees and similar charges, which shall be paid by Buyer, or (2) refund to Buyer the original cost of the equipment plus original transportation charges. If AR Modular RF elects to repair or replace non-conforming or defective equipment, AR Modular RF shall have a reasonable time to make such repairs or replace such parts.

b) Reconditioned Equipment. AR Modular RF warrants to Buyer that the Reconditioned Equipment manufactured and sold by it (directly or through its authorized resellers and distributors) to Buyer shall conform to AR Modular RF Specifications for that equipment and shall be free from defects under normal use in material and workmanship for the period of thirty-six (36) months from the date of original sales invoice for that equipment (the “Reconditioned Equipment Limited Warranty”).
Equipment Limited Warranty), except with respect to equipment (or components thereof) for which a different warranty period is specifically identified by AR Modular RF to that equipment, including in its 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 different warranty period shall apply. The Refurbished Equipment Limited Warranty is limited to equipment manufactured and work performed at AR Modular RF by AR Modular RF employees, but includes components purchased by AR Modular RF and installed by AR Modular RF in the equipment.

If within twelve (12) months from the date of the original sales invoice for the Reconditioned Equipment (or during the different warranty period provided for in the immediately preceding paragraph), AR Modular RF receives written notification (in accordance with these Terms and Conditions) of the Reconditioned Equipment Limited Warranty claim for that equipment, and within that period the equipment or any components covered by this Reconditioned Equipment Limited Warranty are returned to AR Modular RF at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and/or import fees and similar charges, which shall be Buyer's responsibility; or (2) credit the account of Buyer for the original cost of the equipment or such components, or refund the purchase price, if the equipment is returned to AR Modular RF thereunder shall be performed by it in house.

If within thirty-six (36) months from the date of the original sales invoice for the Refurbished Equipment (or during the different warranty period provided for in the immediately preceding paragraph), AR Modular RF receives written notification (in accordance with these Terms and Conditions) of the Refurbished Equipment Limited Warranty claim for that equipment, and within that period the equipment or any components covered by this Refurbished Equipment Limited Warranty are returned to AR Modular RF at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and/or import fees and similar charges, which shall be Buyer's responsibility; or (2) credit the account of Buyer for the original cost of the equipment or such components, or refund the purchase price, if the equipment is returned to AR Modular RF thereunder shall be performed by it in house.

C. Equipment Not Manufactured By AR Modular RF: AR Modular RF GIVES NO WARRANTY (INCLUDING WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), AND DISCLAIMS ALL RESPONSIBILITY OR OBLIGATION WHATSOEVER FOR THE PERFORMANCE OR COMPLIANCE WITH THESE TERMS AND CONDITIONS OR WITH RESPECT TO EQUIPMENT SOLD TO BUYER BY AR MODULAR RF (DIRECTLY OR THROUGH ITS AUTHORIZED RESSELLERS AND DISTRIBUTORS) BUT NOT MANUFACTURED BY AR MODULAR RF.

If AR Modular RF is notified in accordance with these Terms and Conditions, and Buyer returns to AR Modular RF the equipment (or parts thereof) covered by the third-party manufacturer's warranty at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and insurance charges prepaid, and double boxed or packed in other suitable manner, 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 or other warranty exclusion set forth in Section 12(E), below, AR Modular RF shall at its option: (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any customs duties and/or import fees and similar charges, 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 non-conforming or defective equipment, AR Modular RF shall have a reasonable time to make such repairs or replace such parts.

AR Modular RF and Buyer may agree to refurbish equipment for a set price. Repairs required outside the scope of the agreed refurbishment will be priced at the prevailing rates for labor and materials at the time of the repair.

c) Reconditioned Equipment, AR Modular RF warrants to Buyer that the Reconditioned Equipment is manufactured and work performed at AR Modular RF by AR Modular RF employees, but includes components purchased by AR Modular RF and installed by AR Modular RF in the equipment.

If within twelve (12) months from the date of the original sales invoice for the Reconditioned Equipment (or during the different warranty period provided for in the immediately preceding paragraph), AR Modular RF receives written notification (in accordance with these Terms and Conditions) of the Reconditioned Equipment Limited Warranty claim for that equipment, and within that period the equipment or any components covered by this Reconditioned Equipment Limited Warranty are returned to AR Modular RF at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and insurance prepaid, and double boxed or packed in other suitable manner, 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 or other warranty exclusion set forth in Section 12(E), below, AR Modular RF shall at its option: (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any customs duties and/or import fees and similar charges, 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 non-conforming or defective equipment, AR Modular RF shall have a reasonable time to make such repairs or replace such parts.

AR Modular RF and Buyer may agree to refurbish equipment for a set price. Repairs required outside the scope of the agreed refurbishment will be priced at the prevailing rates for labor and materials at the time of the repair.

d) Repair Warranty, If equipment is outside of the relevant warranty period AND the defect arising is identical to the defect purported to be remedied at a service on the same equipment within the immediately preceding six (6) months AND the defect concerned can be traced to a defect in materials or workmanship in that earlier repair, AR Modular RF will make the repair under warranty at no charge (the “Repair Warranty”). AR Modular RF shall make a final determination of coverage under the Repair Warranty when the repair is completed. The Repair Warranty is limited to work performed at AR Modular RF by AR Modular RF employees.

B. Proprietary Software Used in Product Manufactured by AR Modular RF: It, at any time during the period ending two years after delivery to the Buyer of Software proprietary to AR Modular RF and for use in or with any Product manufactured and sold by AR Modular RF, Buyer notifies AR Modular RF, in accordance with Section 12(E), below, of any error or failure in the Software that, in Buyer’s sole judgment, fails to conform to the Software specifications published by AR Modular RF, or in any failure of the Software to conform to AR Modular RF’s software description, which error or non-conformance in fact exists AND which Buyer can demonstrate to AR Modular RF limits on its Buyer’s use of the Software. AR Modular RF agrees to use all commercially reasonable efforts to correct such error or failure so that the Software substantially conforms to AR Modular RF’s software description (the “AR Modular RF Software Undertaking”), but AR Modular RF does not warrant that the Software is free from defects, or that the defects or non-conformance can be corrected; provided, however, that this AR Modular RF Software Undertaking 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, in any warranty exclusions in Section 12(E), this AR Modular RF Software Undertaking shall not apply to any error or failure due to the misuse or negligence of any person other than AR Modular RF, or shall apply to any equipment which has been purchased from a third party manufacturer. For the purposes of these Terms and Conditions, “Software proprietary to AR Modular RF” means solely software developed in-house by AR Modular RF to the exclusion of all other software.

C. Equipment Not Manufactured By AR Modular RF: AR Modular RF GIVES NO WARRANTY (INCLUDING WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE), AND DISCLAIMS ALL RESPONSIBILITY OR OBLIGATION WHATSOEVER FOR THE PERFORMANCE OR COMPLIANCE WITH THESE TERMS AND CONDITIONS OR WITH RESPECT TO EQUIPMENT SOLD TO BUYER BY AR MODULAR RF (DIRECTLY OR THROUGH ITS AUTHORIZED RESSELLERS AND DISTRIBUTORS) BUT NOT MANUFACTURED BY AR MODULAR RF.

If AR Modular RF is notified in accordance with these Terms and Conditions, and Buyer returns to AR Modular RF the equipment (or parts thereof) covered by the third-party manufacturer’s warranty at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and insurance charges prepaid, and double boxed or packed in other suitable manner, 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 or other warranty exclusion set forth in Section 12(E), below, of any error in the Software or、“Modular RF” means software manufactured and sold by AR Modular RF, Buyer shall be entitled to the following (the “Reconditioned Equipment Limited Warranty”), except with respect to equipment (or components thereof) for which a different warranty period is specifically identified by AR Modular RF to that equipment, including in its 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 different warranty period shall apply. The Reconditioned Equipment Limited Warranty is limited to equipment manufactured and work performed at AR Modular RF by AR Modular RF employees, but includes components purchased by AR Modular RF and installed by AR Modular RF in the equipment.

If within twelve (12) months from the date of the original sales invoice for the Reconditioned Equipment (or during the different warranty period provided for in the immediately preceding paragraph), AR Modular RF receives written notification (in accordance with these Terms and Conditions) of the Reconditioned Equipment Limited Warranty claim for that equipment, and within that period the equipment or any components covered by this Reconditioned Equipment Limited Warranty are returned to AR Modular RF at the original shipping point, with transportation charges and all other charges including but not limited to customs duties and insurance prepaid, and double boxed or packed in other suitable manner, 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 or other warranty exclusion set forth in Section 12(E), below, AR Modular RF shall at its option: (1) repair or replace the defective parts and ship prepaid to Buyer, excluding any customs duties and/or import fees and similar charges, 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 non-conforming or defective equipment, AR Modular RF shall have a reasonable time to make such repairs or replace such parts.

AR Modular RF and Buyer may agree to refurbish equipment for a set price. Repairs required outside the scope of the agreed refurbishment will be priced at the prevailing rates for labor and materials at the time of the repair.

If equipment is outside of the relevant warranty period AND the defect

Filing, Conditions of Warranty Claims and Returns.

(a) Any and all Warranty claims of third-party manufacturer warranty claims must be submitted in writing to AR Modular RF in written form. Claims not timely received or submitted in accordance with these Terms and Conditions will be voided.

(b) Any product which was not originally manufactured by and, purchased (directly or through its authorized resellers and distributors) from AR Modular RF;

(c) Any product with an altered, removed, or otherwise unintelligible serial number; or

(d) Any product with broken warranty seals or evidence of any attempted repair or alteration by anyone without AR Modular RF's written authorization.
(b) No Product (or component thereof) will be accepted for repair, replacement, other service or credit without a specific return authorization (“RA”) number furnished by AR Modular RF in advance of the return shipment. AR Modular RF may, at Buyer’s expense, return to Buyer or hold any product received without a valid RA, or that is not in accordance with Buyer’s requested information, and to obtain updates in the RA and Product return process_rest with Buyer.

(c) Notwithstanding anything to the contrary in these Terms and Conditions, upon the occurrence of any default by Buyer in the payment of any portion of the purchase price due for any Product or component thereof, all warranties and all obligations of AR Modular RF as service Product or components sold to Buyer whether under the transaction for which payment is past due or otherwise shall terminate.

(d) Return transportation for Limited Warranty covered Products will be by ‘best way’ ground, as AR Modular RF, within its discretion, determines. AR Modular RF may, within its discretion, arrange for expedited shipping or transportation at the customer’s request and expense. All Product returns shall be subject to Buyer’s obligations as set forth in these terms and conditions of sale, including specifically as set forth in Section 20, below. Return shipping is specifically subject to AR Modular RF receiving the necessary export, and any other applicable license for the return of the Product, with all costs incurred in relation thereto being for Buyer’s account. All customs, import or export fees and similar charges or taxes incurred in the return of Product to, or by AR Modular RF shall be for the sole account of Buyer, and Buyer shall have responsibility for properly procuring all import and export licenses and other applicable approvals.

G. Exclusion of All Other Express and All Implied Warranties. OTHER THAN AS SPECIFICALLY SET FORTH IN THE LIMITED WARRANTIES (OR SUCH OTHER WARRANTIES WHICH MAY SPECIFICALLY ARISE IN CONNECTION WITH THE PURCHASE OF SPECIFIC MATERIALS, PRODUCTS OR COMPONENTS FROM A THIRD PARTY MANUFACTURER, AS THE CASE MAY BE), AR MODULAR RF MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF ANY BREACH OF ANY AR MODULAR RF REPRESENTATION OR WARRANTY IN RELATION TO, OR ANY CONFORMANCE OF, OR DEFECT IN ANY PRODUCT, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE). AR MODULAR RF DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, REGARDING THE CONFORMANCE OF THE RAW MATERIALS. Without limiting the foregoing (but subject solely to Section 14, below), AR MODULAR RF DOES NOT MAKE ANY WARRANTY, REPRESENTATION, COVENANT OR ANY OTHER UNDERLYING OR FACTUAL DISCLAIMER OF ANY KIND WHATSOEVER RELATING TO THE CONFORMANCE OF THE RAW MATERIALS OR COMPONENTS THEREOF (OR ANY EQUIPMENT, SOFTWARE OR COMPONENTS MANUFACTURED OR SUPPLIED BY THIRD-PARTIES).

H. Exclusive Remedy. BUYER’S SOLE AND EXCLUSIVE REMEDY AND AR MODULAR RF’S ABSOLUTE, AGGREGATE LIMIT OF LIABILITY IN CONNECTION WITH ANY CLAIM WHATSOEVER DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF ANY BREACH OF ANY AR MODULAR RF REPRESENTATION OR WARRANTY IN RELATION TO, OR ANY CONFORMANCE OF, OR DEFECT IN ANY PRODUCT, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY OF RECOVERY (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE). AR MODULAR RF WILL IN NO EVENT BE LIABLE FOR ANY CONFORMING PRODUCT, BUYER MUST ASSIST AR MODULAR RF IN

I. Out of Warranty Service. To the extent it is, within AR Modular RF’s discretion, feasible or practical to do so, AR Modular RF may agree to provide out-of-warranty service or repairs on equipment manufactured by it or a third party (or components thereof) but only pursuant to a service contract or purchase order executed and accepted by AR Modular RF and Buyer. The rates and terms of such service or repairs shall be in accordance with AR Modular RF’s prevailing rates, terms and policies from time to time.
specifically stated in such writing, and shall be limited to the instance of breach or default expressly referenced in the waiver.

18. Applicable Law and Jurisdiction: These Terms and Conditions and this Contract shall be governed and construed in all respects by the laws of the State of Washington and the federal laws of the United States of America, without reference to its, or their conflict of laws provisions. Buyer hereby submits and consents to the exclusive jurisdiction of the state and federal courts in the State of Washington in relation to any dispute, action or proceeding in connection with, arising under, or in relation to these Terms and Conditions or this Contract (whether framed in tort, contract, or any other theory of recovery, whether framed in tort, contract, or any other theory of legal recovery). The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

19. Government Contracts: If any 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 made mandatory 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 20-1.4 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 60-74.1.

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 (EAR), 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 other authorization, if required. In addition, Buyer is responsible for complying with any local laws that may impact Buyer’s right to import, export, or use AR Modular RF products. Without limiting the foregoing, Buyer agrees that it will not transfer any export controlled item, data, or services, to any person or entity not permitted to receive such item, data, or services, or who are not in full compliance with all applicable export control regulations, or who are not in compliance with any other applicable law, rule, or regulation. Buyer agrees to ensure that all persons, entities, and foreign persons, to whom Buyer transfers AR Modular RF products, are in compliance with all laws, regulations, and export control laws.

b) Buyer represents and warrants that (i) Buyer is not located in, and shall not use any AR Modular RF products in, any country that is subject to U.S. or foreign export restrictions; (ii) Buyer shall not use any AR Modular RF products in the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicles; (iii) Buyer is not a Restricted Person defined as any person or entity (1) included on any list (promulgated by any Government) of prohibited persons or denied persons determined to be affiliated with certain regimes or otherwise involved in narcotics trafficking, terrorism, weapons proliferation, or other restricted activities; (2) owned or controlled by, or acting for or on behalf of, any person or entity described in clauses (1) and (2), or (3) and (4); Buyer is not a person described in clause (1) and (3); Buyer is not prohibited from participating in export transactions by any federal agency of any government.

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

d) Buyer shall immediately notify the AR Modular RF Procurement Representative if Buyer is, or becomes, a Prohibited Person or owned or controlled by or for or on behalf a Prohibited Person or if Buyer export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

e) 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 Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import and compliance program in accordance with the ITAR.

f) Where Buyer is a signatory under an AR Modular RF export license or other authorization, Buyer shall provide prompt notification to the AR Modular RF Procurement Representative in the event of changed circumstances including, but not limited to, ineffectiveness, termination or potential termination of the export license or other authorization, and the failure or existence of a U.S. Government investigation, that could affect the Buyer’s performance under this Contract.

g) Buyer hereby acknowledges that AR Modular RF is prohibited from participating in or supporting international boycotts of certain foreign countries, including Israel, if such boycotts are excluded from the terms and conditions of this contract with AR Modular RF or Buyer and its agents, subcontractors, representatives, or their associates will not authorize or make any payments or gifts or offers or promises of payments or gifts of any kind, directly or indirectly, in connection with this Contract to: (i) any government official to influence the official for the purpose of obtaining or retaining business or securing some other improper advantage; (ii) any employee of a private company in order to improperly induce that employee to provide any competitive advantage in selling products or services or in otherwise doing business with that company.

h) In the AR Modular RF sole judgment, any breach of any section of this paragraph has occurred, AR Modular RF is entitled to terminate this Contract effective immediately on five (5) days written notice to Buyer. At the end of such five days, Buyer shall not be required to provide the warranty or other services set forth in this Contract.

i) 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, whether or not in their performance of any under this Contract or these Terms and Conditions or this Contract.

21. Anti-Corruption:

a) Buyer is aware of and familiar with the provisions of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78bb-1, et seq.) as amended together with all other applicable anti-corruption laws or regulations, (“Anti-Corruption Laws”), and will comply with all Anti-Corruption Laws.

b) 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.

c) Buyer shall be responsible for any payment or other advantage in selling products or services or in otherwise doing business with that company.

d) If in AR Modular RF’s sole judgment, any breach of any section of this paragraph has occurred, AR Modular RF is entitled to terminate the Contract effective immediately on five (5) days written notice to Buyer.

e) Buyer shall be responsible for any loss, 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.

22. Assignment: This Contract shall be binding upon and inure to the benefit of AR Modular RF and Buyer and their successors and permitted assigns. Buyer shall not be entitled to assign or transfer any of its rights or obligations hereunder without the prior written consent of AR Modular RF. Buyer’s assignment of all or any portion of its rights hereunder without such consent shall be void.

23. Complete Agreement; Modifications: This Contract constitutes the entire agreement between the parties relating to the sale and purchase of the Product described on the face hereof and no additional terms or conditions will be effective unless agreed to in writing and signed by an authorized officer of AR Modular RF.

24. Notices: All Notices or other communications under or pursuant to these Terms and Conditions (“Notices”) must be addressed in writing by Buyer to AR Modular RF’s physical or email address as stated below or, by AR Modular RF to Buyer’s physical or email address as stated on Buyer’s purchase order (or such other address as AR Modular RF or Buyer may notify to the other in writing in accordance with this Section 24), and are deemed to have been duly received: (a) on delivery, when delivered in person; (b) five (5) business days after being sent by registered or certified mail, return receipt requested, postage prepaid; (c) two (2) business days after deposit with a recognized national or overnight courier service; or (d) when email is delivered, if Buyer is so notified by email by AR Modular RF.

25. Severability: If any provision (or part thereof) of these Terms and Conditions is held to be unenforceable under any applicable law, such provision shall be modified or excluded from these Terms and Conditions so that this Contract or these Terms and Conditions or this Contract to the extent necessary to implement the purposes of these Terms and Conditions or Contract, and the balance of these Terms and Conditions or Contract shall be interpreted as if such provision were so modified or excluded and shall be enforceable in accordance with its terms.

26. 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.

27. Attorneys’ Fees: In the event that AR Modular RF or Buyer institutes legal proceedings (to include, without limitation, litigation, arbitration or interlocutory proceedings) under or pursuant to these Terms and Conditions or Contract against the other, whether based in contract, tort or any other legal theory of recovery, the prevailing party in those proceedings shall be entitled to recover its reasonable costs and expenses against the unsuccessful party, including its reasonable attorneys’ fees and court costs.

28. Legal Action: ALL ACTIONS OR OTHER PROCEEDINGS BY BUYER OR ANY OF ITS AFFILIATES AGAINST AR MODULAR RF OR ANY OF ITS AFFILIATES OR THEIR PROPERTY AND THE REPRESENTATIONS ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS, ANY CONTRACT, ANY PURCHASE ORDER OR THE DESIGN, MANUFACTURE, SUPPLY, SALE, WARRANTY, DELIVERY, INSTALLATION, INSPECTION, ASSEMBLY, TESTING, REPAIR, SERVICE, REPLACEMENT, OPERATION, MAINTENANCE, USE OF, OR OTHERWISE IN RELATION TO ANY PRODUCTS, WHETHER BASED IN CONTRACT, BREACH OF WARRANTY, TORT, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY, MUST BE COMMENCED WITHIN THE APPlicable STATUTORY PERIOD, BUT IN NO EVENT MORE THAN ONE (1) YEAR FROM THE DATE OF ACCRUAL OF THE RELEVANT CAUSE OF ACTION.