Advanced Photonix, Inc.  
(“Seller”)  
Terms & Conditions of Sale

1. ACCEPTANCE:
Seller desires to provide its customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each contract would result in a substantial impairment of service accordingly. Products furnished and services rendered by Seller are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on Buyer’s order, Seller’s performance of any contract is subject to approval of Buyer’s payment. Seller’s prices stated on the quotation are not valid unless otherwise specifically agreed to in writing by Seller. In the absence of such agreement, the quantities, prices, and other terms of the quotation shall govern. Any terms or conditions contained in Buyer’s purchase order which are inconsistent or additional to those set forth herein shall be of no effect and in the event of any conflict between the terms of Buyer’s purchase order and the terms stated herein, the latter shall control (i.e., those on the face hereof).

Seller’s prices and quotations are subject to the following:
(a) All published prices are subject to change without notice.
(b) Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after the date thereof unless otherwise stated in writing.
(c) All shipments will be billed at prices in effect on the date of acceptance of Buyer’s order.
(d) Unless otherwise stated in writing, Buyer is responsible for all freight, insurance, and taxes on the product(s) purchased and/or services rendered by Seller.
(e) Prices quoted are for Products and/or non-recurring engineering only and do not include technical data, property rights of any kind, patent rights, qualification, environmental or other than Seller’s standard test conditions and other than normal domestic commercial packaging unless expressly agreed to in writing by Seller.

Unless otherwise stated in writing, and agreed to by Buyer, all tools and equipment shall remain the property of Seller. In addition, all data necessary or related to the manufacture or testing of goods for Buyer shall remain the sole property of and in the custody of the Seller. Seller is not obligated to retain any tools and equipment for Buyer longer than thirty (30) days after the last use of such tools or equipment in the manufacture or testing of goods for Buyer.

(g) Prices are subject to redetermination at any time as provided herein.
(h) Seller does not assume responsibility for any customer-supplied materials sent as tooling, test fixtures or components for processing.

3. PAYMENT:
Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped on approved credit accounts shall be due in thirty (30) days. Past due balances shall be subject to a service charge of 1.5% per month (18% per annum), but not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefore are subject to the above terms. Seller may cancel or delay delivery of Products in the event Buyer fails to make prompt payment thereof. Seller hereby reserves the right to retain title to the Products and a security interest in them and in Buyer’s property in any order notwithstanding any security agreement heretofore in accordance with the terms hereof. When requested by Seller, Buyer shall duly acknowledge this contract, and accept, and agree to pay for any and all such shipping charges, premiums, taxes, fees and other charges related thereto, and shall hold Buyer harmless from and against all claims, expenses, and all costs upon the same.

Buyer, at its expense, shall fully insure Products against all loss or damage, either concealed or external. As used in the clauses appearing herein or attached hereto, “reasonable control” includes but is not limited to acts of God, acts of Buyer, acts of civil or military authority, or any other person, firm, corporation, trade or labor union, or other entity, and includes all legal or equitable remedies it may have against Buyer.

Any claim for loss of or damage to the Products must be made in writing within thirty (30) days after notice of such loss or damage is received by Buyer. Buyer shall provide Seller, at its option, with the name and address of the carrier, the shipping document, a complete listing of all items damaged, and the purchase order number, invoice number, and shipped date. The claim for such loss or damage shall be made within thirty (30) days of the date of the claim for loss or damage. Buyer’s failure to make such claim shall constitute a waiver of Buyer’s claims and damages for such loss or damage.

4. SHIPMENTS AND DELIVERIES:
All shipments are F.O.B. place as Seller may designate in writing. Buyer, at its expense, shall fully insure Products against all loss or damage, either concealed or external. As used in the clauses appearing herein or attached hereto, “reasonable control” includes but is not limited to acts of God, acts of Buyer, acts of civil or military authority, or any other person, firm, corporation, trade or labor union, or other entity, and includes all legal or equitable remedies it may have against Buyer.

5. TERMINATION:
No order may be terminated by Buyer except by mutual agreement in writing and upon payment of cancellation charges subject to the following conditions:
(1) Buyer will pay, at applicable contract prices for all Products which have been completely manufactured and delivered to Buyer at the time of Seller’s receipt of notice of termination, plus a pro rata portion of normal profit on the contract; (2) Buyer is responsible for bills of lading, storage, and all other costs associated with any Product returned to Seller; (3) Seller’s normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, Seller will divert completed parts, material or work-in-process from terminated contracts to other Customers where Seller has, in its sole discretion, it is practical to do so.

6. WARRANTY:
Except for the warranty of title, Seller warrants only that each product be delivered hereunder shall at the time of delivery and for ninety (90) days thereafter conform to Seller’s specification therefore. Seller’s obligations hereunder are limited to repair or replacement of any defective Products. Seller may at its option, repair or replace defective Products. In the event of Seller’s repair or replacement of any defective Products, Seller shall remain fully liable for any and all such costs and expenses hereunder. In the event that Seller shall elect to repair or replace any defective Products, Seller shall not be deemed to have terminated this contract nor shall it be required to credit Buyer’s account for any portion of the purchase price previously paid by Buyer.

(a) No product shall be returned to Seller for warranty adjustment without prior authorization from Seller.
(b) All Products returned will be shipped to Seller’s plant by Buyer, at Buyer’s expense. Seller will pay return freight where adjustment is made.
(c) Upon receipt of the returned Products Seller will examine such Products to determine to its own satisfaction that the alleged defect did not arise as a result of misuse, neglect, improper installation, repair, alteration or accident.
(d) Seller will notify Buyer in the event the Products are not subject to warranty adjustment, and unless disposition instructions as to such Products are received from Buyer within thirty (30) days of such notification, the Products will be returned to Buyer, freight collect.
(e) Seller shall in no event be obligated hereunder for any of Buyer’s cost incident to the replacement of any defective product.
(f) On orders for unpurchased silicon die, Seller warrants that Products meet applicable specifications prior to die bonding and lead bonding when tested under generally accepted industry practices.

THIS EXPRESS WARRANTY SHALL EXTEND TO BUYER ONLY AND NOT TO BUYER’S CUSTOMERS OR BUYER’S NON-DOMESTIC LOCATIONS AND, EXCEPT FOR THE WARRANTY OF TITLE, IS IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY SHALL NOT APPLY TO PRODUCTS PURCHASED FOR RE-SALE OR IN ELECTRONIC FORM, OR IN THE PRACTICE OF ANY TRADE OR BUSINESS. NOTWITHSTANDING THE FOREGOING, IF ANY PRODUCT COVERED BY THIS ORDER IS DESIGNED OR DEEMED “DEVELOPMENTAL” OR “EXPERIMENTAL” USE, NO WARRANTY WHATSOEVER EXCEPT THE WARRANTY OF TITLE, WILL BE APPLICABLE HERETO, AND BUYER SHALL INDEMNIFY SELLER FOR ANY CLAIMS OR LIABILITY ASSERTED AGAINST SELLER IN CONNECTION WITH SUCH “DEVELOPMENTAL” OR “EXPERIMENTAL” PRODUCTS. STATEMENTS MADE BY ANY PERSON, INCLUDING REPRESENTATIVES OF SELLER WHICH ARE INCONSISTENT OR CONTRADICTORY TO THE TERMS OF THIS WARRANTY UPON SELLER UNLESS REDUCED TO WRITING AND APPROVED BY AN OFFICER OF SELLER.

7. DAMAGES AND LIABILITY:
SELLER’S LIABILITY FOR DAMAGES SHALL NOT EXCEED THE AMOUNT SELLER ACTUALLY RECEIVES FROM CUSTOMER FOR THE PRODUCTS, MATERIAL, SERVICE RENDERED. AS THE CASE MAY BE, WHICH IS THE SUBJECT OF CLAIM OR DISPUTE. IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF ANTICIPATED PROFITS, OR FOR THE LOSS OF USE, OR FOR COST OF COVER OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. BUYER WAIVES ANY RIGHT, EXTENDING BEYOND THE WARRANTY, TO CLAIM FOR NEGLIGENCE BY SELLER IN DESIGN, MATERIAL, WORKMANSHIP OR INSTALLATION.

8. DISPUTES:
In the event that a lawsuit is filed, it is agreed that the venue will be the appropriate State Court located in Ventura County, California, or any other venue at Seller’s option. Buyer waives its right to litigate outside Ventura County, California, or any other venue Seller chooses. No action, regardless of form, arising out of, or in any way connected with, the Products furnished or services rendered by Seller, may be brought by Buyer more than one (1) year after the cause of action has accrued.

9. PATENTS:
(a) Buyer shall hold Seller harmless against any expense, damage, cost or loss resulting from any suit or proceeding brought for infringement of patents or trademarks arising from compliance with Buyer’s specifications, designs, specifications or instructions.
(b) The sale of any product or Products by Seller pursuant to the order does not convey to Buyer any right or license to use said products under any patents covered by said product or Products, or any combination thereof with or without other devices or elements.
(c) With the exception of designs furnished by Buyer, all patent rights, titles, licenses, royalties, and other rights to patents of whatever kind may be granted or obtained by Buyer in the course of the manufacture of the Products hereunder, and in any inventories of completed products remaining in Buyer’s possession in the course of the performance of this contract, shall remain the exclusive property of the Seller, agreements to the contrary must be in writing signed by Seller’s authorized representative.

10. COMPLIANCE WITH LAWS:
Seller represents that the Products will conform in all respects to the requirements of all applicable laws, rules, and regulations relating to the Products. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, damages, costs, losses, and expenses, including but not limited to, reasonable attorneys’ fees, and technical assistance fees incurred in connection with any such claim, action or proceeding brought by Buyer more than one (1) year after the cause of action has accrued.

11. ASSIGNMENT:
Buyer shall not assign this order or any interest or rights thereunder without the prior written consent of Seller.

12. CHANGES:
Upon written acceptance by Seller, Buyer may make changes within the scope of this order in specifications, designs, specifications or instructions. Buyer shall agree to pay for any additional cost directly resulting from such change. Reduction in order quantities and/or extension or delay of scheduled shipment dates will be subject to price adjustment as determined by Seller and agreed to by the Buyer. Seller reserves the right to reject such changes and thus the original quantities, shipment dates, and prices shall remain in effect.

13. GOVERNMENT CONTRACT:
Unless otherwise stated by reference on the face hereof, all orders are considered to be commercial sales transactions based upon government contract or subcontract reference. Seller’s pricing and production and shipping commitments shall be based upon published price lists and Seller’s internal accounting and production analysis. Buyer agrees that all such transactions shall be subject to audit at any time by any governmental agency and that Seller shall be indemnified against any and all claims, costs, or expenses which shall be applicable equally to all customers as determined by Seller. Seller reserves that such prices and allocations that are made under such government contracts are the same as would have been made to Seller’s “most favored customer” for the same Products or Services under similar circumstances.

As such Seller’s terms and conditions as stated in the preceding paragraphs shall supersede ASPR and other government regulations, except those which would cause Seller to be in violation of applicable Federal Laws.

(Reserved for future use)

Advanced Photonix, Inc.