

## **Terms and Conditions**

By referencing this quotation in a purchase order, you agree to the following:

### General Terms

1. All items are non-returnable and non-cancellable.
2. Shipment is via Boston Micromachines Corporation's shipper of choice, unless requested otherwise at time of order. If the Buyer chooses to nominate a particular courier, the name of that courier/carrier (address/contact person/phone number) and the relevant account number with this courier/carrier must be clearly stated in PO.
3. All orders are subject to availability.
4. Please list all items required at time of ordering.
5. All claims arising from damaged, shortage or overage of goods shall be made within ten (10) days of receipt and should reference the original purchase order. A Returned Merchandise Authorization (RMA) number must be issued by Boston Micromachines Corporation and clearly marked on all shipping containers.

### ORDER OF PRECEDENCE

The terms and conditions contained herein constitute the entire agreement between the parties and are the only basis upon which Boston Micromachines Corporation offers to sell goods to Buyer, unless otherwise agreed to in writing. Buyer's terms and conditions are hereby rejected and shall be of no effect to the extent that they are inconsistent with or in addition to these terms and conditions. Notwithstanding anything to the contrary in Buyer's purchase order, acceptance by Buyer of the Products or any portion thereof shall be deemed to constitute Buyer's acceptance of all of Boston Micromachines Corporation's terms and conditions set forth herein.

### PRICE

Unless otherwise indicated on the face hereof, prices shown are net prices F.O.B. Cambridge, MA or such other shipping point as designated by Boston Micromachines Corporation, exclusive of delivery and installation charges and taxes.

Buyer shall pay all delivery charges including, without limitation, rigging and transportation charges, the cost of any transit insurance and the cost of installation. The delivery charged on each order will reflect the weight, size and destination of the Products. Any tax, fee, levy, assessment, exaction, imposition or other charge imposed by any local, state, or federal government now or hereafter levied upon the production, sale, use, import, export, ownership or shipment of the Products, shall be paid for by Buyer.

### TENDER AND ALTERNATIVE PAYMENT FEES

For all orders that require Boston Micromachines Corporation to submit a bid or that involve methods of payment which include but are not limited to letter of credit, bank guarantee, etc. and are other than a bank transfer or check from Buyer to Boston Micromachines Corporation, the Buyer is subject to pay a fee of up to \$2,000 in addition to the amount indicated on the quote at the discretion of Boston Micromachines Corporation.

### PAYMENT AND CREDIT TERMS

Terms are net thirty (30) days from date of each invoice unless otherwise specified. For orders totaling greater than US\$50,000, 100% payment will be due at the time of purchase, unless otherwise specified. For all orders less than or equal to US\$50,000 in value with shipping destinations outside the U.S., 15% payment will be due at the time of purchase, unless otherwise specified.

All bank fees relating to payments (e.g. fees charged by the issuing bank and fees by the receiving bank) are the responsibility of the Customer.

### CANCELLATION

All items are non-cancellable. Any order cancellation or reduction by Customer will be subject to penalty, up to 100% of the purchase price, based upon work-in-process and subcomponents purchased.

### WARRANTY

Any software or hardware failures due to manufacturing or inherent defects will be repaired or replaced (at Boston Micromachines Corporation's discretion) for a period of one year after delivery.

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USA

#### LIMITATIONS OF WARRANTY

Warranty does not include any damage incurred from mishandling or misuse of the DM or driver including failure due to Electric Static Discharge (ESD), excessive optical intensity, or by not following the instructions included in the product manual. Components provided as part of orders without DM surface protection are exempt from this warranty and Boston Micromachines will not warrant the order after the product is removed from the protective container.

#### BUYER-SPECIFIED COMPONENTS

All components are checked for quality before being integrated into the final product. If any components are supplied by the Buyer or Buyer's third-party vendor for integration into the product, they will be inspected for gross defects but will not be guaranteed for performance with the final product. The performance of the component is the responsibility of the Buyer and/or the third-party vendor and will not be tested or validated by Boston Micromachines Corporation.

#### EXPORT CONTROL

The products in the attached Quote are export-controlled under the U.S. Export Administration Regulations in the ECCN classification indicated on the Quote. By referencing a Quote or placing an order based on a Quote, the Buyer agrees to comply with all U.S. export laws and regulations. The Buyer also agrees that all products received are to be used in the country of destination and are not intended to be exported to another country after delivery.

#### LIMITATION OF LIABILITY

Neither party shall be liable to the other for any lost revenue, profits or business opportunities, damage to reputation, goodwill or business relationships, nor for any indirect, punitive, exemplary, special or consequential damages, even if such party has been advised as to the possibility of such damages. Furthermore, in no event shall the liability of Supplier exceed the value of the applicable SOW or Purchase Order, related to the claim, less any portion thereof not then paid by Buyer.

#### FORCE MAJEURE

Neither party shall be liable for delay in performance of its obligations under this Agreement due to causes beyond its control, including without limitation war, embargo, national emergency, insurrection or riots, acts of the public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other in writing, of the delay and to mitigate the resulting delay.

#### CHOICE OF LAW AND JURISDICTION; COURTS

This transaction is deemed to have been made in Massachusetts and shall be construed in accordance with the laws of the Commonwealth of Massachusetts, applicable to contracts made and to be performed wholly within the Commonwealth of Massachusetts. All controversies, disputes and claims arising out of or relating to this transaction, or the breach thereof, shall be adjudicated by a court of competent jurisdiction within Middlesex County of Commonwealth of Massachusetts or the Federal District Court for the District of Massachusetts, except that any judgment obtained in such action may be enforced in other jurisdictions. Buyer hereby waives personal service of process provided that process is served by certified, registered mail. Buyer hereby waives any objection that it may have regarding the personal jurisdiction or venue of any of the aforesaid courts, as well as any claim that the forum or venue is inconvenient or should be transferred. Buyer agrees to pay any and all reasonable costs, legal fees, and expenses incurred by Boston Micromachines Corp. resulting from all controversies, disputes or claims which are adjudicated or settled favorably to Boston Micromachines Corp.