

**QUANTUM IMAGING AND SCD.USA INFRARED LLC  
STANDARD TERMS AND CONDITIONS FOR VENDOR PURCHASE ORDERS**

Agreement by Seller to furnish the materials, and products (“goods”) or services, including the products resulting from services hereby ordered, or its commencement of such performance, or acceptance of any payment, shall constitute Seller’s unqualified acceptance of this Purchase Order subject to these terms and conditions. In the event that this Purchase Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions herein contained shall be void and of no effect unless specifically agreed to by Buyer in writing. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer’s Purchasing Representative. These terms and conditions, together with any referenced exhibits, attachments or other documents, constitute the entire agreement between the Parties with respect to the subject matter of this Purchase Order; and supersede any prior or contemporaneous written or oral agreements pertaining thereto.

**1. INSTRUCTIONS TO SELLER**

- (a) **Purchase Order Number:** Seller shall include Buyer’s Purchase Order number including any change, modification, or revision designation or controlling blanket agreement number, on all invoices (or vouchers), packing lists, bills of lading, packages, containers, and correspondence processed under this purchase order.
- (b) **Packing List:** A packing list must accompany each shipment of goods referencing Buyer’s Purchase Order number, part number and revision (if applicable) for each item on the purchase order.
- (c) **Packaging and Insurance:** No extra charge for packaging or insurance shall be allowed unless specifically noted herein. Goods shall be packaged to ensure safe arrival at destination, be described to conform to carrier’s classification rules so as to obtain lowest transportation cost, and not be insured nor show declared value for shipment beyond FOB point.

**2. DELIVERY; NOTICE OF DELAY; OBSOLESCENCE**

- (a) Time is of the essence and failure to deliver in accordance with the delivery schedule under this Purchase Order, if unexcused, shall be considered a material breach of this Purchase Order. No acts of Buyer, including without limitation modifications of this Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller’s risk and expense shipments made in excess of this Purchase Order or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates.
- (b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer’s receipt or acceptance thereof shall not constitute a waiver to Buyer’s rights and remedies hereunder.

(c) During performance of this Purchase Order, Seller shall notify Buyer of any planned obsolescence of the good(s) set out in this Purchase Order.

(d) No partial shipments allowed unless expressly authorized by Buyer.

### **3. PRICE**

Seller agrees that (a) the per unit price or total price set forth on the face of this order is firm, not subject to increase, and includes all applicable taxes for goods covered herein (b) the price as herein stated shall include all costs for marking, packaging, preservation, quality assurance, transporting and insuring the terms ordered to Buyer's dock, or the designated location and appearing on the PO face thereof.

### **4. EXTRA CHARGES**

Buyer shall not be liable for extra charges of any kind including charges for packing, cartage or insurance unless specifically ordered and agreed to by Buyer in writing or electronic mail system in advance.

### **5. WARRANTY**

- (a) Seller warrants the goods delivered pursuant to this Purchase Order, unless specifically stated otherwise in this Purchase Order, shall (i) be new (ii) be free from defects in workmanship, materials, and design and (iii) be in accordance with all the requirements of this Purchase Order. Seller further warrants that the performance of work and services shall conform with the requirements of this Purchase Order and to high professional standards. All warranties in this Purchase Order shall survive inspection, test, final acceptance and payment of goods and services.
- (b) Seller warrants that the goods delivered pursuant to this Purchase Order shall (i) be and only contain materials obtained directly from the Original Component Manufacturer (OCM) or the Original Equipment Manufacturer (OEM), (collectively, the Original Manufacturer (OM)) or an authorized OM reseller or distributor; (ii) not be or contain Counterfeit Items, as defined below; and (iii) contain only authentic, unaltered OM labels and other markings. Seller shall obtain and retain all documentation required to fully trace the distribution and sale of the goods delivered hereunder back to the relevant OM, and, on request of Buyer, shall provide such authenticating documentation. Counterfeit Items include, but are not limited to, goods or separately-identifiable items or components of goods that: (i) are an illegal or unauthorized copy or substitute of an OM item; (ii) are not traceable to an OM sufficient to ensure authenticity in OM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OM or are not constructed in accordance with OM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OM design but not disclosed as such or are represented as OM authentic or new; (v) have not passed successfully all OM required testing, verification, screening, and quality control processes; or (vi) an item with altered or disguised documentation, package labeling, or item marking intended to mislead a person into believing a non-OM item is genuine, or that an item is of better or different performance when it is not. Seller further warrants that it has and shall have an internal

Counterfeit Item control process for goods delivered hereunder in accordance with the standards or instructions set forth in any Buyer's specifications, or other provisions incorporated into this Purchase Order. Buyer shall have the right to audit, inspect, and / or approve the processes at any time before or after delivery of the goods ordered hereunder. Buyer shall have the right to require changes to the processes to conform with Buyer's defined standards, if any. Failure of the Seller to conform its processes with Buyer's defined standards may result in the termination of this Purchase Order in accordance with the termination provisions set forth herein. Seller shall include the substance of this Section in any agreement between Seller and its lower tier sellers.

- (c) Seller warrants that any hardware, software and firmware goods delivered under this Purchase Order: 1) shall not contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (a) damage, destroy or alter any software or hardware; (b) reveal, damage, destroy, or alter any data; (c) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; 2) shall not contain any third party software (including software that may be considered free software or open source software) that (a) may require any software to be published, accessed or otherwise made available without the consent of Buyer, or (b) may require distribution, copying or modification of any software free of charge; and 3) shall not infringe any patent, copyright, trademark, or other proprietary right of any third party or misappropriate any trade secret of any third party.
  
- (d) These warranty entitlements shall inure to the benefit of both Buyer and Buyer's customers. As used in this Purchase Order, Buyer's customer(s) shall include its direct and indirect customers such as direct sale end-users, higher-tier subcontractors, prime contractors and the ultimate user under relevant prime contract(s).
  
- (e) Seller shall be liable for and save Buyer harmless from any loss, damage, or expense whatsoever that Buyer may suffer from breach of any of these warranties. Remedies shall be at Buyer's election, including, but not limited to, the prompt repair, replacement or reimbursement of the purchase price of nonconforming goods and, in the case of services either the prompt correction of the defective services at no cost or reimbursement of the amounts paid for such services. Return to Seller of defective or nonconforming goods and redelivery to Buyer of repaired or replaced goods shall be at Seller's expense. Goods or services required to be corrected, repaired or replaced shall be subject to this Section and the Inspection Section of this Purchase Order in the same manner and to the same extent as goods or services originally delivered under this Purchase Order, but only as to the repaired or replaced goods or parts thereof or the corrected service thereof. Seller shall promptly comply with Buyer's direction to (i) repair, rework or replace the goods, (ii) furnish any material or parts and installation required to successfully correct the defect or nonconformance or (iii) successfully correct the defective or nonconforming service.

## **6. INVOICES AND DOCUMENTATION**

Each invoice issued as a result of this Purchase Order shall conform to the following:

- (a) Shall be rendered separately for each delivery.
- (b) Shall not cover more than one Purchase Order.
- (c) Shall contain the Purchase Order number under which it is issued, the part number(s) and identifying data.
- (d) Shall be rendered to the proper Accounts Payable department as set forth on this Purchase Order.
- (e) Each invoice payment term will be calculated from date the invoice is received by the proper Accounts Payable department.
- (f) Vendor is required to provide clear and legible documentation in performance of its obligations under this Purchase Order.

## **7. INSPECTION/ACCEPTANCE**

- (a) All goods and services shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's customer before, during and after performance and delivery. Buyer may require Seller to repair, replace or reimburse the purchase price of rejected goods or Buyer may accept any goods and upon discovery of nonconformance, may reject or keep and rework any such goods not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Buyer shall be at Seller's expense. Buyer's acceptance of goods or services shall not be deemed to diminish Buyer's rights or be final or binding on Buyer if latent defects, fraud, or misrepresentation on the part of Seller exists.
- (b) If inspection and test are made on the premises of Seller or Seller's lower-tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Section are supplementary to and not in lieu of the provisions of Paragraph 7 (a) above.
- (c) Neither Buyer's inspection nor Buyer's failure to inspect shall relieve Seller of any responsibility to perform according to the terms of this Purchase Order. Notwithstanding any other provision of the Purchase Order, the risk of loss of, or damage to, nonconforming goods remains with Seller until cure or acceptance.

## **8. CHANGES**

Buyer shall have the right by written notice to suspend or stop work or to make changes from time to time in the services to be rendered or the goods to be furnished by Seller hereunder or the delivery schedule. If such suspension, stoppage or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Paragraph 8 must be asserted in writing within twenty (20) days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. However, nothing herein shall excuse Seller from proceeding with this Purchase Order as changed pending resolution of the claim.

Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's

and Seller's rights and obligations hereunder unless set forth in a writing which is signed by Buyer's Purchasing Representative and which states it constitutes an amendment or change to this Purchase Order.

## **9. FORCE MAJEURE**

Except for a default of Seller's subcontractor at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to any cause beyond their reasonable control and without their fault or negligence. Such causes include, but are not limited to, acts of God or of the public enemy, acts of the government in its sovereign or contractual capacity, fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In the event that performance of this Purchase Order is hindered, delayed or adversely affected by causes of the type described above ("Force Majeure"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing and, at Buyer's option, this Purchase Order shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of Force Majeure or this Purchase Order may be terminated for convenience.

## **10. TITLE**

Unless specified elsewhere in this Purchase Order, title to items furnished under this Purchase Order shall pass to Buyer upon acceptance, regardless of when or where Buyer takes physical possession.

## **11. INDEMNIFICATION**

Seller shall indemnify and hold harmless the Buyer and the Owner, and any contractor, agent or employee of either against any fine, penalty, loss, cost, damage or liability, including attorney's fee, arising from personal injury and death of third parties or damage to their property, and arising or relating in any way to defects in the Goods or the negligence or other fault either of Seller, or those whom it is responsible. In addition to any indemnification as provided hereunder, if by virtue of a patent infringement suit and injunction shall issue against Buyer which prohibits or limits the use of any goods purchased hereunder, Seller at Buyer's request shall supply Buyer with non-infringing replacement goods of a similar kind and quality with Buyer's approval.

## **12. ASSIGNMENT**

- (a) Seller may not assign this Purchase Order without Buyer's prior written consent.
- (b) Seller shall promptly notify Buyer in writing of any organizational changes made by Seller, including name or ownership changes, mergers or acquisitions.
- (c) Seller shall not change the location of manufacture of the goods to be provided to Buyer under this Purchase Order without Buyer's prior written consent.

### **13. COMPLIANCE WITH LAW**

Upon acceptance of this order, Seller warrants and represents that it has and will continue during the performance hereunder to comply with all relevant provisions of Federal, State and local laws and regulations.

### **14. PROPRIETARY INFORMATION**

- (a) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 14(d) below, all specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction.
- (b) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 14(d) below, all specifications, information, data, drawings, software and other items which are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing goods or services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.
- (c) Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 14(d) below, any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title thereto. Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary or otherwise expressly set forth in this Purchase Order and subject to Paragraph 14(d) below, any work performed pursuant to this Purchase Order which includes any copyright interest shall be considered a "work made for hire". Subject to Paragraph 14(d) below, to the extent any of such works do not qualify as a "work made for hire", Seller hereby assigns to Buyer all its intellectual property rights, including its copyright rights, in such works effective immediately upon creation of such works, including when they are first fixed in a tangible medium.
- (d) Applicable U.S. Government Procurement Regulations incorporated into this Purchase Order shall, when applicable, take precedence over any conflicting provision of this Section 14 to the extent that such Regulations so require. The incorporation by reference of such U.S. Government Regulations dealing with subcontractors rights in Technical Data, subject inventions, copyrights, software and similar intellectual property are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted to Buyer pursuant to prior agreements between the Parties.

## **15. BUYER'S PROPERTY**

- (a) All drawings, tools, jigs, dies, fixtures, materials, and other property supplied or paid for by Buyer shall be and remain the property of Buyer; and if Seller fails to return such property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to enter Seller's premises and remove any such property at any time without being liable for trespass or damages of any sort.
- (b) All such items shall be used only in the performance of work under this Purchase Order unless Buyer consents otherwise in writing.
- (c) Goods made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or concern without Buyer's prior written consent.
- (d) Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and all property to which Buyer acquires an interest by this Purchase Order and shall be responsible for all loss or damage to said property except for normal wear and tear.
- (e) Upon request, Seller shall provide Buyer with adequate proof of insurance against such risk of loss or damage.
- (f) Seller shall clearly mark, maintain in inventory, and keep segregated or identifiable all of Buyer's property.

## **16. USE OF INFORMATION**

Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller, in connection with the placing or filling of this Purchase Order, is furnished or disclosed as a part of the consideration for this Purchase Order; that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary; and that Seller shall assert no claims (other than for patent infringement) by reason of the use or disclosure of such information by Buyer, its assigns, or its customers. No employee of Buyer has the authority to make an agreement providing for the confidential treatment of, or limiting the use of, information so furnished or disclosed, unless such agreement is made in writing and signed by Buyer's company President. However, in the event that this clause should conflict with the provisions of any patent rights or data rights clause of this Purchase Order, the latter shall prevail.

## **17. NON-PUBLICITY**

Seller shall not, without prior written consent of Buyer (a) make any news release, public announcement, denial or confirmation, of this Purchase Order or this subject matter nor (b) in any manner, advertise or publish the fact that the Buyer has placed this Order.

## **18. CANCELLATION**

Upon written notice to Seller, Buyer may cancel all or any separable part of this Purchase Order. Seller immediately shall stop all work on the Goods, place no additional orders, and cancel its existing orders on the best possible terms. Pending Buyer's instructions, Seller shall preserve and protect Goods on hand, work in progress, supplier data, and completed Goods, both in its own and in its supplier's facilities. Buyer shall have the immediate right to remove from Seller's premises the Goods and all drawings, records, and parts paid for by Buyer. Buyer's only cancellation payment, if any, shall be that amount that reflects the part of the Purchase Order

satisfactorily performed before cancellation, less money already paid to Seller. Seller is not entitled to recover for lost profits or other consequential or incidental damages.

#### **19. SETOFF**

All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

#### **20. GOVERNING LAW**

This contract shall be governed by the laws of the State of Colorado, excluding its conflict of law rules. If this is an international transaction, the parties agree that the United Nations Convention on the International Sale of Goods shall have no force and effect.

#### **21. ATTORNEYS FEES**

In the event that the parties litigate any dispute arising under or relating to this Purchase Order, the prevailing party shall recover from the other all reasonable attorneys' fees and costs incurred at trial and on appeal, including those incurred in any bankruptcy proceedings.

#### **22. PAYMENT; LIMITATION OF LIABILITY**

Buyer's obligation to pay Seller for Goods is expressly conditioned upon receipt of completed, conforming Goods. BUYER'S TOTAL LIABILITY FOR CLAIMS BY SELLER SHALL NOT EXCEED THE TOTAL PURCHASE PRICE OF THE PURCHASE ORDER, IRRESPECTIVE OF THE FACTS AND LEGAL THEORIES UNDERLYING SUCH CLAIMS, INCLUDING BUT NOT LIMITED TO THEORIES OF NEGLIGENCE AND OTHER TORTS. In no circumstances shall Buyer be liable to Seller for consequential and incidental damages, including but not limited to lost profits, and goodwill. In no event shall Seller acquire any direct claim or direct course of action against the U.S. Government.

#### **23. EXPORT OF EQUIPMENT AND TECHNICAL DATA**

Seller shall not disclose or otherwise transfer any technical data or equipment furnished to it by Buyer or developed by Seller directly from such data to any third party, including foreign nationals employed by the Seller within the United States, except in compliance with the applicable licensing, approval, and all other requirements of the US export control laws, regulations and directives, including but not limited to the Arms Export Control Act (22USC 2778), International Traffic in Arms Regulations (22 CFR Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799) and DoD Directive 5230.25, Withholding of Unclassified Supplier from Public Disclosure. Seller shall obtain Buyer's written consent before submitting any request for authority to export any of Buyer's proprietary or export controlled technical data. Seller shall indemnify and hold Buyer harmless from all claims, demands, damages, costs, fines, penalties, attorney's fees and all other expenses arising from failure of Seller to comply with this Article 28. US manufacturers of export-controlled defense articles are required to register with the US Department of State (USDOS).



## **24. CODE OF CONDUCT**

Seller has received and reviewed Buyer's Supplier Code of Conduct and shall strictly comply with the Code as presently drafted and as it may be amended by Buyer from time to time. Seller shall require and certify that all sub-contractors and vendors that manufacture or assemble Quantum Imaging Inc. or SCD.USA Infrared LLC Goods comply with the Code. In the event of any breach of the Code, Buyer may provide Seller with the opportunity to come into compliance. Failure to comply with the Code may give rise to cancellation of this Purchase Order.