



**SUNTRON CORPORATION  
TERMS AND CONDITIONS OF SALE**

**These Terms and Conditions of Sale ("Terms") shall govern the sale of products and services (collectively, "Products") by Suntron Corporation and its subsidiaries (collectively, "Suntron") to a Suntron customer ("Buyer") where such Products are described in an associated Suntron quotation or similar Suntron document and provided by Suntron (each a "Quote"). These Terms state the entire agreement between Buyer and Suntron, and Suntron does not agree to any other terms, including without limitation any terms on Buyer's purchase order. Unless otherwise agreed to in writing by Suntron, Buyer's submission of any purchase order shall constitute Buyer's acceptance of these Terms.**

**1. Orders.** Buyer shall submit to Suntron each calendar quarter, at least thirty (30) days in advance, firm and irrevocable written purchase orders for Products to be purchased by Buyer during the immediately following month. Buyer shall also provide, on a monthly basis, a rolling, ninety (90) day forecast of its anticipated purchase orders to be submitted by Buyer for Products during such ninety (90) day period. Such forecasts shall not be binding in and of themselves, but shall represent a good faith estimate by Buyer of such anticipated purchase order submissions. All Buyer purchase orders shall identify the Products, unit quantities, part numbers, descriptions, designs, specifications, prices and delivery dates. All such purchase orders are subject to written acceptance by Suntron and once accepted by Suntron, each shall constitute a firm binding obligation upon and order from Buyer (each, a "Firm Order") to purchase such quantities of Products at the prices described in **Section 2 ("Pricing")**. Any failure of Suntron to accept or reject a purchase order shall be deemed a rejection thereof. The parties agree that all of the following shall be considered "Excess Inventory": (i) any non-standard Products, including without limitation Products to be assembled in kit form, or large volume Product purchase items; (ii) all excess or obsolete Product raw materials, parts, components, and work-in-process; and (iii) all partially-finished Products and finished Products, which are held by or on behalf of Suntron pursuant to any Firm Order.

**2. Pricing.** Product prices shall be specified by Suntron in each Quote and shall be applicable for the period specified in the such Quote. If no period is specified, Product prices shall be valid for thirty (30) days from the date of such Quote. Notwithstanding the foregoing, Product prices shall in all cases be subject to increase by Suntron upon notice in the event of an increase in Suntron's costs or other circumstances beyond Suntron's control. Product prices are exclusive of taxes, impositions and other charges, including, without limitation, sales, use, excise, value added and similar taxes or charges imposed by any government authority, and any international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties, all of which shall be paid for separately by Buyer. If Suntron shall for any reason pay any of the foregoing, the same shall be immediately reimbursed by Buyer to Suntron in addition to the price of the Products.

**3. Payments.** Buyer will pay the full amount of all invoices for all Firm Orders in U.S. dollars within thirty (30) days after the date of such invoice, and shall make such payment to the address specified thereon. Any late payment of invoices by Buyer shall bear interest at the lower of one and one-half percent (1.5%) for each month and partial month during which such amounts were owed and unpaid, or the highest rate allowed by law. Buyer agrees to pay the entire amount of each invoice from Suntron pursuant to each such invoice without offset or deduction. Firm Orders are also subject to credit approval by Suntron, and further subject to such credit limits as Suntron may from time to time impose. Buyer represents that

all sales to Buyer under these Terms are sales for use in production or resale; therefore no sales, use, excise or other taxes are due as a result of such sales and Buyer will be responsible for payment of any such taxes. Buyer will provide, upon request from Suntron, all applicable reseller tax certificates.

**4. Delivery, Title and Acceptance of Product.** Subject to Buyer's timely performance, including the payment of all amounts owed to Suntron hereunder, Suntron shall use its commercially reasonable efforts to deliver the Products by the dates and to the locations requested by Buyer in each associated Firm Order. All such Product deliveries shall be *Ex Works (Incoterms 2000)*, Suntron's facility unless otherwise specified by Suntron. The method and route of Product delivery shall be at Suntron's discretion, unless Buyer supplies explicit commercially reasonable instructions in writing at least five (5) days prior to shipment. In addition to the purchase price of the Product, Buyer shall also pay any and all transportation charges (including insurance). Buyer assumes risk of loss of the Products upon the Products departing Suntron's facility, regardless of whether Suntron has arranged for the transportation of the Products. Products will be deemed accepted upon delivery and Buyer hereby waives all right of revocation.

**5. Products Built to Buyer's Specifications.** If Buyer rejects Products due to workmanship issues or failure to comply with Buyer's specifications, Buyer must give written notice thereof to Suntron within fifteen (15) day period, and in such case Suntron shall either direct Buyer to return rejected Products to Suntron at Buyer's risk and expense (after first obtaining from Suntron a return materials authorization ("RMA") number), or to make such Products available for pick up by Suntron or Suntron's carrier. Suntron shall use its commercially reasonable efforts to repair or replace, and thereafter return to Buyer, such rejected Products. Buyer hereby waives all right of revocation of acceptance, except for workmanship issues or a failure to comply with Buyer's specifications. Buyer represents and warrants that it has independently determined the fitness, need, usefulness, and applicability of all Products as to Buyer's needs, and further that Buyer does not rely on any representation of Suntron in such regard.

**6. Purchase Order Cancellations.** Buyer may cancel purchase orders outside of a rolling 30-day window. Upon notice of Cancellation, Suntron will provide Buyer, within 30 days of receipt of notice to cancel an Order, documented cancellation charges related to accepted Orders. The cancellation charges will detail obsolete, excess, and NC/NR material on-hand/ on-order. All component quantities will relate to specific demand up to the component's minimum order quantities. Additionally, any applicable re-stocking or cancellation charges, WIP, and finished goods will be identified. The value of WIP and finished goods is at the purchase price agreed upon in Attachment I. Raw material will be valued at component standard (standard cost \* quantity). Suntron will make commercially reasonable efforts to minimize Buyer's liability by returning cancelled material to suppliers and when there is demand and use without alteration, move inventory to other Suntron's customers. Buyer agrees to provide Suntron a purchase order for the cancellation costs and/or purchase order for build out quantities to reduce raw material buy back within 15 days after Buyer acceptance of the cancellation charges.

**7. Termination for Cause.** Either party may terminate these Terms, including all then-existing Firm Orders, effective upon written notice in the event the other party materially breaches these Terms and such breach remains uncured for thirty (30) days following written notice of breach to the breaching party. If Buyer terminates these Terms pursuant to this **Section 7 ("Termination for Cause")**, Buyer shall be liable for cancellation charges, including without limitation the costs of all excess or obsolete



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material purchased and manufactured for Firm Orders and costs and losses incurred by Suntron because of such termination, and including without limitation all Excess Inventory costs and losses.

**8. Disclaimer.** ALL DELIVERABLES HEREUNDER, INCLUDING WITHOUT LIMITATION ALL PRODUCTS, ARE PROVIDED STRICTLY "AS IS," AND SUNTRON MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, WITH RESPECT THERETO OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED.

**9. Limitation of Liability.** IN NO EVENT WILL SUNTRON BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF SUNTRON HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IN NO EVENT WILL SUNTRON'S AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS OR THE PRODUCTS EXCEED THE GREATER OF FIVE HUNDRED DOLLARS (\$500.00), OR THE PRICE ACTUALLY PAID BY BUYER FOR PRODUCTS WHICH GAVE RISE TO SUCH CLAIMS. NO ACTION RELATING TO PRODUCTS MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER SHIPMENT OR PROVISION THEREOF.

**10. Buyer's Indemnity.** BUYER HEREBY RELEASES AND WAIVES ANY CLAIMS OR CAUSES OF ACTION OF BUYER AGAINST SUNTRON AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SUNTRON HARMLESS FROM AND AGAINST ANY AND ALL LOSS, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEYS' FEES, RESULTING FROM OR ARISING IN CONNECTION WITH ANY CLAIM, DEMAND, THREAT SUIT OR PROCEEDING BY BUYER OR ANY THIRD PARTY: (i) ALLEGING INFRINGEMENT OR DILUTION OF ANY COPYRIGHT, TRADEMARK, TRADE NAME, TRADE SECRET, PATENT OR OTHER PROPRIETARY RIGHTS, RELATING TO THE DESIGN, MANUFACTURE, SALE, USE OR DISPOSITION OF ANY PRODUCTS BUILT TO THE SPECIFICATIONS OF BUYER, OR (ii) ALLEGING LOSS, DAMAGES, BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR DAMAGE TO PROPERTY WHICH IS CAUSED BY THE NEGLIGENCE OR INTENTIONAL ACTS OF BUYER, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS, OR ANY DEFECT IN BUYER-SPECIFIED MATERIALS, COMPONENTS OR DESIGN OF THE PRODUCTS OR CAUSED BY BUYER-SPECIFIED SUPPLIERS; PROVIDED, HOWEVER, THAT SUNTRON SHALL HAVE THE RIGHT, AT ITS OPTION, TO PARTICIPATE IN THE DEFENSE OF ANY OF THE FOREGOING, WITHOUT RELIEVING BUYER OF ANY OBLIGATIONS HEREUNDER.

**11. Export Control.** In exercising its rights and performing its obligations under these Terms, Buyer will comply with all applicable international, national and local laws and regulations. Without limiting the generality of the foregoing, Buyer will not use or re-export, or permit any person to use or re-export, any Products without all required licenses, and Buyer will comply, and will require all of its own Buyers to comply, with all applicable export and import control laws including, but

not limited to, the US Export Control and ITAR regulations and the Denied Parties, the Department of State and the Office of Foreign Asset Control screening requirements. Buyer will defend, indemnify and hold harmless Suntron and its successors, agents, officers, directors and employees from and against any violation of any laws or regulations by Buyer or any of its agents, officers, directors, employees or customers.

**12. Compliance with Law.** Each party shall fully comply with all laws, rules and regulations applicable to such party's performance hereunder, and Customer shall ensure that Products shall at all times comply with all laws, rules and regulations of the jurisdictions in which they are marketed, sold or used. Without limiting the generality of the foregoing, Customer understands and agrees that compliance with all laws, rules and regulations as regard the recycling, content and disposal of Products after delivery thereof to Customer, in the United States and elsewhere, shall be the sole responsibility of Customer. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these terms.

**13. Federal Contracts.** For Products acquired pursuant to Federal Acquisition Regulations, the following shall be construed to be incorporated herein: (i) Equal Opportunity (E.O. 11246); (ii) Affirmative Action for Special Disabled and Vietnam era Veterans (38 U.S.C. 2012(a)); and (iii) Affirmative Action for Handicapped Workers (29 U.S.C. 739). No other Federal Acquisition Regulations shall be construed to apply to Suntron without Suntron's written acceptance thereto.

**14. Notice.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified in the Quote or at such other address as the party shall specify in writing, and sent to the attention of such party's Chief Executive Officer. Such notice shall be sent by certified mail, return receipt requested, or by FedEx or other reputable delivery service.

**15. Applicable Laws.** These Terms shall be subject to the laws of the State of Arizona. The State and Federal courts located in Maricopa County, Arizona, shall have sole jurisdiction over, and shall be the sole forum for resolving, any disputes arising hereunder, and the parties hereby submit to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.

**16. General.** If any provision of these Terms is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of these Terms will not operate or be interpreted as a waiver of any other or subsequent breach. Neither these Terms nor any rights or obligations of Buyer may be assigned by Buyer in whole or in part. Any purported assignment in derogation of the foregoing shall be void. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of such party. These Terms set forth the entire understanding and agreement of the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of these Terms, and may be changed only by a writing signed by both parties. Any purported oral modification of these Terms shall be void.