



TERMS AND CONDITIONS OF SALE

- 1. ENTIRE AGREEMENT:** Validyne Engineering, a California corporation (herein “Validyne” or “Seller”) Terms and Conditions of sale shall apply to all contracts and agreements for the sale of goods and services delivered or provided by Validyne. Any of the terms and conditions of the Buyer’s order which are inconsistent with the terms and conditions set forth herein are hereby objected to and rejected and shall not be considered applicable to the sales of the products mentioned herein. Unless Buyer shall notify Validyne in writing to the contrary within ten (10) days after receipt of this form, acceptance by Buyer of these terms and conditions shall be inferred; and, in the absence of such notification, any Sales Acknowledgement issued by Validyne shall not constitute the acceptance of Buyer’s terms and conditions, nor shall any delivery of goods pursuant to Validyne’s Sales Acknowledgement constitute such acceptance. The shipment by Validyne of the products covered herein shall be conclusively deemed to be subjected to the terms and conditions hereof. Validyne’s Terms and Conditions of Sale shall supersede any prior written or oral agreements or understandings and shall not be supplemented by any prior course of dealing, course or performance or usage of trade, and shall constitute the entire agreement of the parties. No modification hereof shall be valid unless in writing and duly signed by a person authorized by Validyne. In the event of any conflict between the terms of this purchase order and the terms of any written agreement, the terms and conditions set forth herein shall prevail. This purchase order is limited to the terms and conditions specified on the face of the purchase order and as set forth herein.
- 2. PRICES:** Prices are subject to change without notice. Adjustments shall be made to Validyne’s prices in effect at the time of order placement. Unless otherwise specified on order, prices are for the specific quantity stated and do not include taxes nor charges for transportation, engineering documentation, special packaging or marking, or testing. All applicable taxes arising out of the transactions contemplated by this purchase order shall be borne by the Buyer.
- 3. SHIPMENT:** All shipments will be EXW Validyne factory unless otherwise specified. In the absence of specific instructions, Validyne will select the carrier. Title to the material shall pass to the Buyer upon delivery thereof by Validyne to the carrier of delivery service; thereupon, the Buyer shall be responsible thereof. Products held for the Buyer, or stored for the Buyer, shall be at risk and expense of Buyer. If in order to comply with Buyer’s required delivery date it becomes necessary for Validyne to ship by a more expensive way than may be specified herein, any increased transportation costs resulting therefrom shall be paid for by Buyer.
- 4. PAYMENT TERMS:** Unless otherwise stated, payment terms are net 30 days from date of invoice, subject to approval by Validyne of amount and terms or credit. Validyne reserves the right to require payment in advance of COD or otherwise modify credit terms either before or after order acceptance of any order if for any reason Buyer’s credit is or becomes objectionable to Validyne. Pending correction of any objectionable credit situation, Validyne may withhold shipments without incurring any liability to the Buyer until payment in full has been made. When partial shipments are made, payments therefore shall become due in accordance with the designated terms of the invoice. If, at the request of the Buyer, shipment is postponed for more than 30 days, payment will become due 30 days after notice to Buyer that products are ready for shipment.
- 5. TAXES:** Unless prohibited by statute, Buyer agrees to pay Validyne the amount of any Federal, State, City, or other tax import or export duty, tariff, or customs charge levied by any jurisdiction either inside or outside the United States which Validyne may be required to pay on account of ownership at the place of installation, or the manufacture, transportation, sale, or use of the material and equipment which is the subject of this purchase order.



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6. **DELIVERY; BUYER-CAUSED DELAYS:** Delivery dates are approximate and are based on timely receipt of all necessary material and/or information from Buyer, where applicable. Seller will notify Buyer if conditions arise that would prevent compliance with delivery schedules. Seller shall not be liable for any Validyne Engineering Inc. 8626 Wilbur Av. Northridge, CA 91324 Ph: 818-886-8488 damages (liquidated or otherwise), re-procurement costs, consequential damages, or lost profits for delay in delivery or for failure to give notice of delay. Buyer shall not suspend or cancel any order, except where in accordance with these terms or where expressly agreed to by Seller. Unless Buyer explicitly prohibits advance delivery, Buyer agrees to accept delivery up to thirty (30) days in advance.
7. **FORCE MAJEURE:** Without limiting the generality of Seller's limitation of liability for delivery as set forth in Sections 6 and 13 hereof, under no circumstances shall Seller be responsible for delays in performance arising from causes that are beyond its control and without Seller's fault or negligence ("Force Majeure Event"). Examples of such Force Majeure Events include, but are not limited to, fires, floods, unusually severe weather, earthquakes, quarantine restrictions, riots, strikes, freight embargoes, or transportation delays; shortage of labor, failure to obtain export licenses, inability to secure fuel, material, supplies or power or other energy requirements or on account of shortages thereof; acts of God or of the public enemy, acts of Buyer; any existing or future acts or inaction of any government affecting the conduct of Seller's business which Seller in its judgment and discretion deems advisable to comply with either as a legal or patriotic duty, or to any other cause beyond Seller's reasonable control. Seller shall advise Buyer of a Force Majeure Event as soon as is possible in light of its type and degree.
8. **INSPECTION AND ACCEPTANCE:** Unless Buyer has notified Validyne in writing thirty [30] days from date of shipment of any products that said products are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, it must also specify the reasons[s] why the products are being rejected.
9. **PRODUCT WARRANTY:** Seller makes no warranty that the products delivered hereunder shall be merchantable or fitness for a particular use. Validyne 5-Year Standard Product, 2-Year Modified Product, 1- Year Cables and Accessories Warranty i. Validyne warrants that at time of shipment, Standard Products (defined as products manufactured by Validyne and sold hereunder as Catalog Model numbers for regular inventory-keeping purposes) will be free of defects in materials and workmanship for a period of five years after shipment.
 - a. Modified "M-Number" Products (defined as products designed, manufactured, and tested to customer specific requirements) are warranted to be free of defects in materials and workmanship for a period of two years after shipment. iii. Cables and Accessories are warranted to be free of defects in materials and workmanship for a period of one year after shipment. iv. Exclusive Remedies: During the warranty period, Validyne will, at its option, repair or replace products which prove to be defective in materials and/or workmanship. Validyne shall not be liable for any incidental or consequential damages or lost profits caused by the failure of its products. v. Please Note: Modified products made to customer specifications cannot be returned or exchanged, but if it is possible to modify them further (at additional cost) to better suit Buyer's application, Validyne will advise Buyer accordingly at the time of occurrence. Seller's warranty shall be solely for the benefit of Buyer, but shall not run to Buyer's successors, assigns and customer, nor users of goods sold by Buyer.



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10. **REPAIR:** In the uncommon event that a Validyne sensor, cable or component is underperforming within published specifications, Validyne will make an effort to evaluate the cause and determine a resolution, including, in the sole discretion of Validyne the repair or replacement of said sensor. For Validyne sensors that are no longer within the warranty period, the Validyne Service Department will attempt to repair Validyne manufactured sensors within a two-year period from the date of manufacture. No work will be completed until the customer has been notified of any monetary charges related to the repair.
11. **CANCELLATION:** Buyer may cancel an Order wholly or partially by written notice which must be received by Seller prior to the scheduled delivery date. For any such cancellation, Buyer shall (a) reimburse Seller in full for all direct and indirect costs, overhead, settlements with suppliers, and administrative, accounting, and legal costs and fees associated with such cancellation and (b) pay the appropriate cancellation charges set forth in this Section 11. Seller will notify Buyer of the amount owed, which amount shall be immediately due and payable to Seller. Cancellation charges applicable to the specific Products and/or services cancelled shall additionally include the following: (i) Products Without Non-Recurring Costs. For cancelled Products whose price does not contain any nonrecurring or amortized costs, if notice of cancellation is received from Buyer at least ninety (90) days before the scheduled equipment delivery date, Buyer must pay to Seller a cancellation charge of twenty percent (20%) of the Order price. If written notice of cancellation is received less than ninety (90) days from the scheduled equipment delivery date, Buyer must pay Seller the full Order price. (ii) Products and/or Services with Non-Recurring Costs. For all Products whose price contains nonrecurring or amortized costs, or for non-recurring services, Buyer shall in addition to the other costs provided for in this Section 11t pay Seller a cancellation charge comprised of the above as well as the entire portion of the non-recurring or amortized cost.
12. **PATENT INDEMNITY:** (a) Seller's Patent Indemnity to Buyer: Seller agrees to indemnify and hold harmless the Buyer from and against damages which may be finally assessed against Buyer, in any action for infringement of any United States Letters Patent by the Products delivered to Buyer hereunder. Seller shall indemnify Buyer for such infringement actions provided that (1) Buyer shall give Seller written notice of any action, claim, or threat of patent infringement suite, either oral or written, or of the commencement of any patent infringement suit against Buyer relating to Products sold by Seller to Buyer hereunder; and (2) Buyer shall give Seller opportunity to elect to take over, settle, or defend any such claim, action, suit, or proceeding through counsel of Seller's own choice and under its sole direction, and its sole expense; and (3) Buyer, in the event that Seller elects to take over, defend or settle such claims, action, suit, or proceeding, will make available to Seller all defenses known by or available to Buyer; and (4) Seller shall have the right to substitute for any such Product or any part thereof claiming to infringe the patent rights of other non-infringing Products which will give equally good service. If the use of any such Products or any part thereof should be enjoined, Seller shall have the right, at its own expense and in its sole and absolute discretion,, to take any of the following courses of action: (1) to procure for Buyer the right to continue using such Product; or (2) to replace said Product with a non-infringing Product; or (3) to modify the Product so that it becomes non-infringing, or (4) to remove said Product and refund the purchase price and transportation and installation costs. (b) Patent Indemnity Limitation: The foregoing provisions as to patent protection by Seller to Buyer shall not apply to any of the following: (1) to any Products manufactured to the design or specifications furnished by the Buyer, (2) to Orders for special non-commercial Products which Seller has not sold or offered for sale to the public on the open commercial market, (3) to any infringement occasioned by modification by Buyer for any Product without Seller's written consent or any infringement arising from the use of an Product with any adjunct or device added by the Buyer. (c) Patent Indemnity by Buyer to Seller: To the extent that Products delivered hereunder are manufactured pursuant to detailed designs furnished by Buyer, Buyer agrees to indemnify Seller and hold harmless from all legal expenses

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which may be incurred, as well as all damages and costs which may finally be assessed against Seller, in any action for infringement of any United States Letters Patent by such Products delivered hereunder. Seller agrees promptly to inform the Buyer of any claim for liability made against Seller with respect to such Products, and Seller agrees to cooperate with the Buyer in every way reasonably available to facilitate the defense against any such claim.

13. **LIMITATION OF LIABILITY:** Validyne WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, LOST REVENUES, INDIRECT, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES, OR FOR LOSSES, DAMAGES, OR EXPENSES DIRECTLY OR INDIRECTLY ARISING FROM THE DESIGN, MANUFACTURE, SALE, USE OR REPAIR OF PRODUCTS, OR ANY INABILITY TO USE THEM EITHER SEPERATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR MATERIAL, OR FROM ANY OTHER CAUSE. BUYER AND DYTRAN AGREE THAT IN NO EVENT WILL DYTRAN BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE CONTRACT PRICE OF THE PRODUCT WHICH PROVES TO BE DEFECTIVE. THE REMEDIES PROVIDED FOR HEREIN SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST DYTRAN FOR ANY ALLEGED BREACH OF DYTRAN'S OBLIGATIONS UNDER THE CONTRACT BASED ON WARRANTY, NEGLIGENCE OR OTHERWISE.
14. **DEFAULT:** If Buyer breaches a material provision of the Order, including any provision of these Terms and Conditions, then Seller has the right to terminate the Order. Seller will submit a written notice to Buyer advising of the breach and Buyer will have five (5) calendar days from delivery of the notice to cure the breach. If Buyer does not cure the breach within the five (5) day period, Seller may terminate the Order in addition to its other rights or remedies. The rights and remedies available to Seller under this Section 14 will not be exclusive and are in addition to any other rights and remedies provide by the Uniform Commercial Code, by law, at equity or under this Order.
15. **MODIFICATIONS:** Unless otherwise provided, Validyne reserves the right to modify the product specifications of products ordered by the Buyer herein providing the modification will not materially affect form, fit, or function.
16. **TOOLING:** Unless otherwise provided, Validyne shall retain title to the possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of the order.
17. **TERMINATION:** A. In the event of the complete or partial termination or cancellation of the order for the convenience of the Government, settlement shall be made by negotiations in accordance with Section 52.249-2 of the Federal Acquisition Regulation,
18. **COMPLIANCE WITH FEDERAL STATE AND LOCAL LAWS:** Validyne shall comply with all federal, state, and local laws and regulations applicable to its performance of its obligations hereunder including [to the extent applicable and with limits on]: Fair Labor Standards Act of 1935, as amended, Williams Singer Occupational Safety and Health Act of 1970, as amended, Welsh-Hesley Public Contracts Act of 1970, as amended, and the equal employment opportunity and affirmative action clauses prescribed by statute [Public Laws 90-202, 93-112, 92-540, 95-507], executive orders [1124B, 11375, 11825, 11701, 11758], and regulations regarding race, color, religion, sex, age, national origin, physical or mental handicap, veteran status, small business, small disadvantaged business, and women-owned business concerns.
19. **EXPORT COMPLIANCE:** (a) **Proof of Export:** Any items provided by Seller which are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their



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original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations. (b) License and Permit Requirements: Seller will execute all export licenses and permits required by the United States Government, and Buyer will furnish reasonable cooperation in acquiring such licenses and permits. If such licenses and permits are not paid for by Buyer, such payments will be added to the contract price. Buyer will secure all licenses and permits required by any foreign government, and Seller will furnish reasonable cooperation in acquiring such licenses and permits. The delivery schedule is contingent upon securing all necessary licenses and permits. Failure to obtain a required license or permit in sufficient time to permit delivery within the time set forth in the contract, and without fault or negligence of the contracting parties, shall occasion an equitable adjustment in the delivery schedule.

20. **QUALITY ASSURANCE.** Validyne Quality Assurance System complies with ISO 9001 and AS 9100 standards.
21. **DISPUTES:** Any dispute or claim of any type or nature whatsoever arising out of or relating to this Order shall be resolved in accordance with the following: (a) **Negotiation Between Executives.** The parties shall first attempt to resolve any dispute arising out of this Order by prompt negotiation between executives who have authority to settle the matter. (b) **Mediation** between the parties in accordance with them mediation rules of the American Arbitration Association, with each party responsible for one-half of the mediation expenses. (c) **Binding Arbitration.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Los Angeles, CA, USA. Hearings will take place pursuant to the standard procedures of the Commercial Arbitration Rules that contemplate in-person hearings. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator(s) shall not award special, consequential, or indirect damages in any arbitration initiated under this Section 21. The standard provisions of the Commercial Rules shall apply. Arbitrators will have the authority to allocate the costs of the arbitration process among the parties. (d) **Interim Relief.** Nothing herein shall affect either party's right to apply to a court of appropriate jurisdiction for interim relief. (e) **Service.** The parties hereto irrevocably agree to accept service of process by registered mail, postage prepaid, or by personal service, on an officer or registered agent of the party, within or without the State of California, or in any other manner permitted by law. The provisions of this Section 21, and any award issued, may be enforced by either party in any court of competent jurisdiction. Arbitration is the exclusive remedy for disputes any between the parties under the Order or by virtue of these Terms and Conditions; the parties hereby waive their respective rights to bring a lawsuit to resolve a dispute hereunder.
22. **CONFIDENTIALITY:** Buyer and Seller agree to keep confidential and protect from unauthorized use and disclosure all confidential, proprietary and trade secret information, all tangible items containing or conveying this information, and all information derived from this information, including, but not limited to, cost and pricing data ("Proprietary Information"), obtained, directly or indirectly, from the other in connection with any offer or Order. The buyer may use Proprietary Information only as necessary as required to evaluate, install, use, maintain and support the Products delivered by Seller. Buyer may disclose Proprietary Information to its employees only as necessary for these purposes. In no event may Buyer disclose Proprietary Information to any third party. Buyer must also keep confidential and not disclose to any other entity the terms of any offer or Order.



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23. **ASSIGNMENT.** Neither Buyer nor Seller shall assign this Agreement or any of its rights, benefits, duties or obligations under this Order to a third party without the written consent of the other. An assignment shall not include the transfer of this Order to another party resulting from a change in control, whether by transfer of stock or assets, merger, consolidation or otherwise.
24. **NON-WAIVER:** Any failure at any time of Validyne to enforce any provision of this order shall not constitute a waiver of such provision or prejudice the right of Validyne to enforce such provisions at any subsequent time.
25. **GOVERNING LAWS:** The terms of this Order, these Terms and Conditions and all rights and obligations hereunder shall be governed in accordance with the laws of the State of California without giving effect to any rules governing conflicts of law.
26. **STATUTE OF LIMITATIONS:** Buyer agrees that any action for an alleged breach of this Order must be commenced within one (1) year after the cause of action has accrued, without regard to the date the breach is discovered. Any action not brought within this one (1) year time period shall be barred, without regard to any other limitations period set forth by law or statute.
27. If this Order bears a government contract number on the face of this Order, Seller shall comply with all pertinent provisions of said government contract and pertinent executive orders and directives to the extent that they apply to the subject matter of this Order. A copy of the government contract's pertinent terms and provisions shall be given by Buyer to Seller upon placement of this Order.
28. This Order and these Terms and Conditions can only be modified or rescinded by a writing signed by authorized representatives of each Buyer and Seller. If any provision of this Order or the Terms and Conditions shall be held or deemed to be illegal, inoperative, or unenforceable, this provision shall not affect any other provision or provisions contained therein. Paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision contained herein. This Order, together with these Terms and Conditions, is intended by the parties as a final expression of their agreement with respect to such terms and is intended also as a complete and exclusive statement of the terms of their agreement.
29. **EXPEDITE ORDERS:** Customer-requested expedited delivery (50% of standard lead time) is subject to a 30% expedite fee. If the expedited lead time is missed due to supplier delay, the expedite fee will be reduced by 7.5% per week of delay, up to a maximum of two (2) weeks (22.5% after one week, 15% after two weeks). If delivery occurs more than two (2) weeks after the expedited lead time, the expedite fee will be removed. This adjustment applies only to delays within supplier control.
30. The terms and provisions hereof shall survive the termination of this Order

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