

# Chaparral Physics

*Development, Calibration, and Production of Fine Infrasound Sensors*

A Division of the **Geophysical Institute** of the **University of Alaska**

## TERMS AND CONDITIONS OF SALE

**CONTROLLING PROVISIONS:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted in writing by the Seller's authorized agent. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter the terms and conditions of this document, and Seller hereby objects thereto.

**TERMS:** Buyer agrees to pay for the products according to Seller's payment terms stated on the invoice. Payment is due, unless negotiated otherwise, 30 calendar days from the date of the invoice. In the event Buyer fails to make any payment to Seller within 20 calendar days after payment is due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to interest and service charges at the maximum contract rate permitted by law unless otherwise agreed upon by the parties.

**GOVERNING LAW, LIMITATION OF ACTIONS, JURISDICTION, AND VENUE:** This transaction shall be governed in all respects by the laws of the State of Alaska. All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against Seller within the applicable statutory period, but in no event more than **ONE (1) YEAR** after the date of invoice, and must be commenced and maintained only in the Superior Court for the State of Alaska, Fourth Judicial District, in Fairbanks, Alaska. Seller, by virtue of this agreement or otherwise, consents to jurisdiction or venue other than as set forth, herein.

**DELIVERY:** Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense arising directly or indirectly from delays or failure to give notice of delay.

**WARRANTY: THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS INSTRUMENT.** The Buyer's sole and exclusive remedy for defects or other problems with the product is that provided by this section. All products will be repaired or replaced, at the Seller's option, for failure to perform based on defects in materials or workmanship for a period of **ONE (1) YEAR** from the original shipping date. Under no circumstances, and in no event, will Seller be liable for personal injury or property damage or any other loss, damage, cost of repairs or incidental, punitive, special, consequential, or liquidated damages of any kind, whether based on warranty, contract, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of the products sold by Seller. Buyer hereby acknowledges and agrees that under no circumstances, and in no event, shall Seller's liability, if any, exceed the net sales price of the defective product(s).

**DISCLAIMER OF WARRANTIES: SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Seller makes no promise or representation that the products or services will conform to any federal, state or local laws, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller. The Seller's products are not intended or authorized for use for any purpose other than detection of infrasound signals for basic scientific research.

**INDEMNIFICATION AND DISCLAIMER OF LIABILITY:** The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation, misapplication of the products, or use for any purpose other than scientific research. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent, comparative, and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities, disclaimers, and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within seven (7) days following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason, except as allowed under the WARRANTY provision of these terms and conditions. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and acceptance.

**SHIPMENTS:** All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or a common carrier. The cost of shipping and any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or a common carrier. Seller has no obligation to insure products during shipment, but if Seller elects to do so, Buyer shall pay the cost of such insurance unless it has instructed Seller in writing that it will not pay for such insurance.

**EXPORT SALES:** If goods herein being purchased are being purchased for purposes of export, the Customer will need to obtain from the federal government certain export documentation before shipping to a foreign country. Buyer is responsible for compliance with any and all export laws and regulations including, but not limited to, Export Administration Regulations and International Traffic in Arms Regulations.

**TAXES:** The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

**SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but in consideration of this sale, any uncertainty or ambiguity shall be construed to minimize any liability of Seller. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

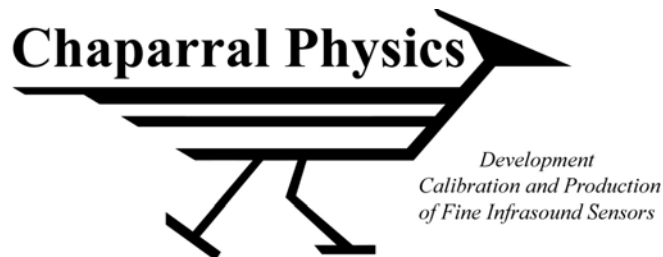
**SET-OFF:** Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller in connection with this transaction.

**NON-WAIVER:** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Seller's authorized representative.

**LIEN ON PRODUCTS:** Seller shall have a lien on any product received by Buyer for the full amount of any obligation of Buyer to Seller related to the transaction evidenced by this agreement.

**EXPORT AND TRANSFER:** These sensors and their technology are intended for the use of the purchaser in the United States of America. The purchaser is hereby advised that any transfer of the commodities and technology to a non-U.S. person or to a non-U.S. destination is subject to U.S. export regulations. It is the responsibility of the purchaser to insure compliance with all applicable U.S. exports regulations.

**ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Seller's authorized representative. To the fullest extent allowed by law, all obligations, disputes, claims, or issues arising out of this transaction shall be governed solely by the terms and conditions contained herein.



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