

## **GENERAL CONDITIONS OF SALE**

The following terms and conditions of sale and limited warranty govern all purchases of equipment, systems, upgrades, and non-system items ("Products") from Shadin L.P., a limited partnership in the State of Texas, dba Shadin Avionics in Eden Prairie, MN ("Seller") by Buyer ("Buyer").

### **AGREEMENT**

Acceptance of Buyer's purchase order is conditional upon Buyer's assent to the terms and conditions printed herein. Buyer's acceptance of any Seller Product(s) shall be conclusively deemed assent to the terms and conditions herein. Seller's failure to object to any terms or conditions stated in Buyer's purchase orders, forms or other communications from Buyer will not be a waiver of the provisions hereof and no other document, including Buyer's terms and conditions of purchase, will be part of this transaction, unless specifically agreed to in writing by Seller.

### **PAYMENT TERMS**

Unless otherwise agreed in writing by Seller, payment terms are:

1. For U.S. domestic Products sales:
  - 100%, net 30 days from shipment; or
2. Milestone or Progress Payments (as parties agree in writing):
  - Net 30 days from date of achievement of agreed payment-bearing milestones, or net 30 days for each calendar month-based progress payments.
3. For Nonrecurring engineering ("NRE") development of products by Seller for Buyer:
  - Fifty percent (50%) of total NRE amount is due on the last Friday in the calendar month of order placement and subsequent payments will become due net 30 days from date of achievement of agreed payment-bearing milestones or net 30 days for each calendar month-based progress payments. Payments for NRE development products are non-refundable. Additional variable costs, such as engineering labor during the test phase and related travel costs, other non-labor costs. will be invoiced separately and be due in accordance with the terms set forth in this paragraph.
4. For international sales, at Seller's option, either:
  - 100% wire transfer prior to shipment; or,
  - 90% letter of credit due at sight; 10% letter of credit due upon acceptance or 30 days from shipment, whichever comes first; or
  - Other terms agreed to in writing.
5. Seller reserves the right to impose a late penalty fee of 1.5% per month (but no more than the highest rate permitted by applicable law) for all past due balances. Seller also reserves the right to require C.O.D. payment, a letter of credit, or other security for payment if Seller determines that such terms are required to assure payment to Seller. In addition, Buyer shall reimburse

Seller for all costs and expenses (including attorney's fees) incurred by Shadin in collecting any payment owed to Seller hereunder. Buyer shall have no right to offset any deductions or credits against any amounts owed hereunder.

## **PRICES**

Unless otherwise provided, all prices are FOB Seller's place of business for domestic sales, and for international sales, Ex Works, INCOTERMS 2020 and prices are exclusive of shipping costs, insurance, and any applicable Taxes (defined below). All price quotations are valid for 30 days unless noted otherwise. Published list prices are subject to change without notice.

## **SHIPMENTS AND TITLE TRANSFER**

All purchase orders are subject to acceptance by Seller. Unless otherwise provided on the attached acknowledgement, all shipments are F.O.B. Seller's place of business for domestic sales; for international sales, shipments are Ex Works, INCOTERMS 2020. Title to all Products shall be deemed to pass to the Buyer upon delivery to the carrier in case of F.O.B and availability of the Products to the carrier in case of Ex Works at point of shipment. All claims for loss or damage after risk of loss/title have passed to Buyer shall be filed by Buyer with the carrier. Except when specified in Buyer's order, Seller reserves the right to select the method and routing of transportation and the right to make delivery in installments. Seller will provide estimated shipment dates upon acknowledgement of Buyer's purchase order. Shipment dates on Seller quotations are approximate only.

Buyer shall assume all risks of loss and responsibility for the cost of shipping and insurance, regardless of the fact that shipping or insurance may have been arranged by Seller on Buyer's behalf. Any freight or delivery charges paid by Seller on shipments to Buyer will be passed on to Buyer, and shall be in addition to the price of goods. Seller has the right to cancel any order or to refuse or suspend shipment for Buyer's failure to meet payment terms on any outstanding invoice.

## **INSPECTION**

Buyer shall examine each shipment of Seller Product reasonably promptly after receipt and inform Seller of any shortage, visible defect or nonconformity to specifications or other requirements of the order agreed to in writing, or incorrect product shipments in writing within ten (10) days of receipt. If no discrepancies are reported by Buyer in writing within ten (10) days of receipt, the shipment shall be deemed delivered complete and defect free and Buyer may not dispute such shipment. If Buyer rejects Products for nonconformity, after obtaining a Return Material Authorization number from Seller and providing the reason for return in writing, may at its option and expense, a) return the Products for prompt correction or replacement; or b) require the Seller to reasonably promptly correct the nonconformity; or c) if neither of these actions resolves the nonconformity within a reasonable time, i.e., thirty (30) days of Seller's receipt of the returned Product, request a refund or credit for the applicable Products and reimbursement of Buyer's return shipping costs. Notwithstanding any inspection by Buyer, that does not relieve Seller of liability from latent defects caused solely by the design or manufacturing by Seller, Seller's negligence, fraud or such gross error or defects as amount to fraud.

## LIMITED WARRANTY

1. Warranty Period
  - For all Products purchased by Buyer, the Warranty Period shall be twelve (12) months from the date of the installation by Buyer into its end-customer's product or twenty-four (24) months from the date of shipment to Buyer, whichever occurs first. Buyer will provide confirming installation date and applicable customer data to Seller upon request. In no event shall the Warranty Period exceed twenty-four (24) months from the date of shipment by Seller to Buyer. The Product Warranty may be extended to end user customers of Buyer who purchase and receive such products within twenty-four months of the date the Products are shipped to Buyer.
2. During the Warranty Period, Seller warrants that:
  - All Products meet specifications published by Seller appropriate to the model and options purchased as of the shipping date or agreed in writing between Buyer and Seller; and
  - All Products will be free from defects in materials and workmanship or defects due to design (other than any design or requirements specified by Buyer)
3. For any failure covered by this limited warranty, Seller shall repair or replace, at Seller's option, the defective Product. Buyer will promptly notify Seller of any failure that occurs during Warranty Period and request an RMA from Seller and provide the reason for return in writing if Buyer returns the product for repair or replacement. Failure to provide such notice will relieve Seller of its warranty obligations.
4. Repair or replacement of a defective Product is the sole and only remedy under this warranty. In case of replacing a defective original Product, Seller will warrant the replacement Product for the remaining Warranty Period of the original Product.
5. During the Warranty Period, replacement Products will be shipped on a no-charge basis on condition that all defective Products must be returned immediately upon receipt of replacement Products. Failure to return the defective Products promptly will result in an invoice for the full price of the replacement Product.
6. This limited warranty is void if failure has resulted from:
  - Misuse, mishandling, accident or neglect, noncompliance with Seller Product operating environment or operation specifications, abuse and misapplication;
  - Improper packing or handling of the Product during handling by Buyer;
  - Unauthorized modification to the Product, attempts to install or de-install or perform unauthorized maintenance or repair by any person that is not the Seller personnel; or
  - An act or event beyond Seller's reasonable control and without Seller's fault or negligence, including but not limited to fires, explosions, floods, earthquakes, power outage or inappropriate transportation, acts of God, war or terrorism.

7. Buyer is responsible for any damages caused by inappropriate transportation.
8. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY IS REPAIR OR REPLACEMENT, AT SELLER'S OPTION. ANY LAWSUIT BY BUYER AGAINST SELLER, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, ARISING OUT OF OR RELATING TO WARRANTY CLAIMS REGARDING THE SUBJECT PRODUCT, SHALL BE FILED WITHIN TWO YEARS FROM SHIPMENT OF THE SUBJECT PRODUCT TO BUYER BY SELLER.
9. Notwithstanding the above, Seller provides no warranties (1) on any Products or portion thereof which is based on the Buyer's design; or (2) respecting any larger system of which the Seller's Product is only a component or part; and (3) non-Seller supplied replacement or repaired parts or Products.

## **CHANGES**

1. Either party has the right, by written proposal to the other, to request changes in the work performed hereunder. None of which will obligate the other until both parties agree upon the changes in a written amendment to the affected order signed by both parties.
2. Buyer may, by written proposal to Seller, request changes in any one or more of the following:
  - Drawings, designs, processes or specifications;
  - Method of shipment or packing;
  - Time and/or place of delivery within the U.S.;
  - Quantity of items ordered (iii and iv are subject to terms in Section 5 above).
3. Except as provided in this Section 8, no order, statement, or conduct of either Buyer or Seller or other employees or officers of either party shall be treated as an amendment or change order under this section or entitle either party to an equitable adjustment under this section.
4. If the proposed change would cause an increase or decrease in either party's cost of, or time required for, performance of any part of the work, as a result of any proposed change requested by a party, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be amended in writing accordingly. Any claim for an adjustment under this section shall be asserted by the affected party in writing within fifteen (15) working days from the date of receipt of the proposed Change Order, unless the parties agree, in writing, to an extension to the fifteen (15) working day period. Negotiations will be held between the parties within thirty (30) days after receipt by a party of the claim or equitable adjustment request from the affected party. Neither party shall be obligated to start work toward accomplishing such proposed change(s), until adjustments in price, delivery, and other affected terms and conditions have been mutually agreed upon and set forth in an amendment to the order signed by both parties.

## **LIMITATION OF LIABILITY**

Seller aggregate liability for all claims of damages arising out of this contract and any purchase order issued under it, shall be limited to direct damages. The aggregate liability of seller will in no event exceed the purchase price for the goods and nonrecurring engineering charges (if any) paid by buyer for the product and NRE that gave rise to the claim.

Notwithstanding any provision of this contract to the contrary, in no event shall either party be liable to the other for any indirect, consequential damages, including, without limitation, loss of revenue, loss of profits, and inability to use any products, incidental, special or punitive, or any damages or expense whatsoever. This applies whether action is based on contract or breach thereof, tort (including negligence, indemnity, and strict liability) or any other theory of legal liability, resulting from any performance or failure to perform this agreement, even if such other party has been advised of the possibility of such damages.

- Any claim by buyer must be made by written notice to Seller specifying the details and providing reasonable evidence in support of such claim.
- Seller shall have no obligation or liability for any gratuitous information or assistance provided by, but not required of Seller.

## **INTELLECTUAL PROPERTY INFRINGEMENT**

Seller shall defend any lawsuit brought against Buyer to the extent such lawsuit is based on a claim that any Product furnished by Seller to Buyer infringes any United States patent, trademark, trade secret, or copyright, provided that Seller is notified promptly in writing and given full and complete authority, information, and assistance for the defense of the lawsuit. Seller shall not be responsible for any compromise made without its consent or for damages arising out of any suit which Buyer has not given Seller timely opportunity to defend. If an infringement claim is made or if Seller believes a claim is likely to be made, Seller may at its option: (a) modify the Product so that it becomes non-infringing, or (b) remove the Product and refund to Buyer the purchase price less a reasonable allowance for use. Seller shall not have any liability to Buyer under any provision of this clause if: (a) the claim is based upon the interconnection or use of the Product in combination with Product or other devices not made by Seller; (b) the claim was based upon use of the Product in any manner for which it was not designed recommended by Seller; or (c) the infringement arises from a design or specifications provided to Seller by Buyer.

THIS SECTION SETS FORTH SELLER'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS RELATING TO SELLER PRODUCTS.

## **SOFTWARE LICENSE**

Any Seller and third party software or firmware (collectively "Software") if any, delivered by Seller to Buyer hereunder is licensed, not sold. Seller grants to Buyer a non-exclusive, nontransferable license to use the Software only in executable object code and only for the purpose of operating the Product. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based upon the Software or allow others to do so except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Buyer shall not make or distribute

unauthorized copies of the Software, and shall acquire no rights of ownership in the Software. Title to and ownership of the Software and all extensions, enhancements and modifications thereof shall remain at all times with Seller and/or its licensors.

### **INTELLECTUAL PROPERTY OWNERSHIP**

Subject to any license rights expressly granted herein, Seller retains all right, title and interest in all of its patents, trade secrets, trademarks, copyrights, software, inventions, technology, ideas, concepts, know-how, tooling, techniques and other proprietary materials, intellectual property and confidential information in existence prior to and/or conceived or developed by Seller in performance of any order from the Buyer.

### **CONFIDENTIALITY**

1. Buyer understands and agrees that Seller Products embody, utilize or otherwise contain Seller confidential and proprietary information and trade secrets ("Confidential Information"). Certain of the Confidential Information are apparent upon visual inspection of the Products. Other Confidential Information can only be discerned upon observation of the operation or the disassembly of the Products, or by reverse engineering. Except to the extent and in the circumstances expressly provided by law, Buyer agrees, represents and warrants that it shall not (or permit others to) reverse engineer, manufacture, decompile, or create derivative works of, any Products without Seller's prior express written consent. Buyer shall not allow any third party to take possession of or to inspect, observe any operation of, or disassemble any Product or any portion of thereof, or take any photograph or recording of the Product or the operation thereof.
2. Buyer shall use reasonable care, and not less than the same care it exercises with respect to its own confidential and proprietary information, to protect the Confidential Information against unauthorized use, loss, theft or disclosure. Buyer shall not disclose or describe to any third party, directly or indirectly, under any circumstances or by any means, any Confidential Information without Seller's prior written consent. Buyer will not be in breach of this section if disclosure of Confidential Information is made pursuant to subpoena or other compulsory judicial or administrative process, provided that Buyer promptly notifies Seller of such subpoena or other compulsory process, and provides reasonable assistance, so that Seller may seek a protective order or take such other action it deems necessary to protect its interest.
3. "Confidential Information" does not include any information concerning Seller that Buyer can demonstrate by written evidence (a) is now or becomes generally known to the public by lawful means and without breach of any confidentiality obligation; (b) is disclosed by Buyer with Seller's prior written consent to unrestricted disclosure; (c) was known to and reduced to writing by Buyer without use of any Confidential Information prior to the date of this Agreement; (d) is independently developed by Buyer without use of any Confidential Information; or (e) is lawfully obtained by Buyer from a third party.

### **FORCE MAJEURE**

Seller's performance of any obligation hereunder shall be excused by any event beyond its reasonable control, including without limitation inclement weather, strikes, governmental laws, regulations or interruptions thereof, war, equipment breakdown, interruption of transportation, and delayed

deliveries to Seller from Seller's suppliers which delays or prevents Seller's performance or makes performance commercially impractical due to unreasonable difficulty, expense, or risk of injury or loss.

#### **EXPORT CONTROL**

Buyer shall at all times comply with the United States laws and regulations governing export control. Buyer shall not use, lease, or sell any Seller Product in any country, or to any purchaser or lessee in any country, other than the country of destination specified in Buyer's order, except in a manner expressly permitted by such laws and regulations. Before shipment to Buyer, for Shadin products that will be exported by Buyer for foreign end-use(s) and end-user(s), Buyer will notify Seller in writing of the end-use, end-user, and ultimate destination country or countries, and any subsequent changes thereto for products purchased from Seller under this contract.

#### **TAXES AND DUTIES**

Unless provided otherwise, prices do not include federal, state, local, or foreign taxes, charges, fees, imposts, levies, duties, or other assessments of any kind or nature imposed by any government ("Taxes"). Buyer shall be responsible for payment of all Taxes on the sale of the Products.

#### **GOVERNING LAW AND DISPUTE RESOLUTION**

1. The validity, interpretation and performance of these terms and conditions and any purchase made hereunder shall be governed by the laws of the State of Texas, USA, without regard to Texas conflict of law principles, and specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.
2. Buyer and Seller shall strive to settle amicably and in good faith any dispute arising in connection with a Buyer's Purchase Order or other contract. If they are unable to do so, with the exception of third party claims regarding aircraft and/or accidents that are in litigation, the Parties agree any dispute shall be resolved by binding arbitration conducted under the rules of the American Arbitration Association, as presently in force, by three arbitrators appointed in accordance with said rules. The place of arbitration shall be Minneapolis, MN. Upon resolution of the dispute, the Purchase Order shall be equitably adjusted, if necessary, to reflect such resolution as specified in the arbitration award.

#### **GENERAL**

1. These terms and conditions constitute the entire agreement between Seller and Buyer. No modifications, changes, additions or amendment to the terms and conditions or promises, representation, or warranties that differ in any way from these terms and conditions herein shall be binding on Seller unless such modifications, changes, waivers, additions or amendments are in writing and signed by a duly authorized representative of Seller.
2. The waiver of any breach or default hereunder shall not constitute the waiver of any subsequent breach or default. In the event of any default by Buyer, Seller may decline to make further shipments. If Seller elects to continue to make shipments, such action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for such default.

3. If any term or condition hereof shall to any extent be invalid or unenforceable, the remainder of these terms and conditions shall not be affected thereby and each term and condition shall be valid and enforced to the fullest extent permitted by law.
4. Buyer shall not assign the performance obligations or any rights hereunder without the prior written consent of Seller. Subject to the foregoing, the terms and conditions shall bind and be for the benefit of the respective parties hereto and their successors and assigns.

## **REPAIR WARRANTY**

For all repairs, upgrades, bench checks, and services purchased by Buyer through the Shadin Avionics Service Center, the Warranty Period shall be three (3) months from the date of the installation by Buyer into its end-customer's product or nine (9) months from the date of shipment to Buyer, whichever occurs first. The Warranty Period for repaired exchange units shall be six (6) months from the date of installation by Buyer into its end-customer's product or twelve (12) months from the date of shipment to Buyer, whichever occurs first. Buyer will provide confirming installation date and applicable customer data to Seller upon request. In no event shall the Warranty Period exceed nine (9) months from the date of shipment by Seller to Buyer. The Product Warranty may be extended to end user customers of Buyer who purchase and receive such products within nine months of the date the Products are shipped to Buyer. This Warranty does not cover any reimbursement for any person's time for installation, removal, assembly or repair.

During the Warranty Period, Seller warrants that:

1. All Products meet specifications published by Seller appropriate to the model and options purchased as of the shipping date or agreed in writing between Buyer and Seller; and
2. All Products will be free from defects in materials and workmanship or defects due to design (other than any design or requirements specified by Buyer)
3. Warranty only covers failures related to prior repair

For any failure covered by this limited warranty, Seller shall repair or replace, at Seller's option, the defective Product. Buyer will promptly notify Seller of any failure that occurs during Warranty Period and request an RMA from Seller and provide the reason for return in writing if Buyer returns the product for repair or replacement. Failure to provide such notice will relieve Seller of its warranty obligations. Repair or replacement of a defective Product is the sole and only remedy under this warranty. In case of replacing a defective original Product, Seller will warrant the replacement Product for the remaining Warranty Period of the original Product.

During the Warranty Period, replacement Products will be shipped on a no-charge basis, two day shipping or longer, on condition that all defective Products must be returned immediately upon receipt of replacement Products. Failure to return the defective Products promptly will result in an invoice for the full price of the replacement Product.

Shadin Avionics requires international customers to take responsibility for all freight, duties and taxes for both incoming and outgoing shipments. The customer must provide an account number for a major international carrier to avoid possible problems and delays caused by collect terms.

Labor and shipping charges may apply to units returned to Shadin Avionics for a problem which cannot be duplicated. The minimum labor charge is (1) hour. This will be communicated following the



troubleshooting procedures.

This limited warranty is void if failure has resulted from:

1. Misuse, mishandling, accident or neglect, noncompliance with Seller Product operating environment or operation specifications, abuse and misapplication;
2. Improper packing or handling of the Product during handling by Buyer;
3. Unauthorized modification to the Product, attempts to install or de-install or perform unauthorized maintenance or repair by any person that is not the Seller personnel; or
4. An act or event beyond Seller's reasonable control and without Seller's fault or negligence, including but not limited to fires, explosions, floods, earthquakes, power outage or inappropriate transportation, acts of God, war or terrorism.

Buyer is responsible for any damages caused by inappropriate transportation.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANT ABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY IS REPAIR OR REPLACEMENT, AT SELLER'S OPTION. ANY LAWSUIT BY BUYER AGAINST SELLER, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES, ARISING OUT OF OR RELATING TO WARRANTY CLAIMS REGARDING THE SUBJECT PRODUCT, SHALL BE FILED WITHIN TWO YEARS FROM SHIPMENT OF THE SUBJECT PRODUCT TO BUYER BY SELLER. Notwithstanding the above, Seller provides no warranties (1) on any Products or portion thereof which is based on the Buyer's design; or (2) respecting any larger system of which the Seller's Product is only a component or part; and (3) non-Seller supplied replacement or repaired parts or Products.