

Veralase Terms and Conditions of Sale

The terms and conditions of sale contained herein (the "Agreement") shall apply to all quotations and offers to sell and purchase orders accepted by Veralase LLC ("Veralase"). Veralase's acceptance of any offer to purchase made by or purchase order issued by Buyer is expressly made conditional on the terms and conditions of sale as set forth in this Agreement irrespective of whether the Buyer accepts them in writing, by implication or by acceptance of and payment for the goods sold hereunder. These terms and conditions of sale shall govern the contractual arrangement entered into between Veralase and Buyer with respect to the goods sold hereunder to the exclusion of any terms or conditions of purchase proposed by Buyer.

- 1. Quotations and Prices.** Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after the date thereof and constitute offers, provided that budgetary quotations and estimates are for preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Veralase. Unless otherwise stated in writing by Veralase, all prices quoted shall be exclusive of transportation, insurance, taxes, customs fees, duties and other charges related thereto, and Buyer shall report and pay any and all such charges and hold Veralase harmless therefrom. Prices quoted relate only to the goods referenced in this Agreement and do not include intellectual property, industrial property, or patent rights of any kind, nor shall they include product testing other than Veralase's standard tests. Veralase reserves the right to cancel in whole or in part any quotation made with a typographical or pricing error.
- 2. Delivery, Title and Risk of Loss.** For domestic shipments, the delivery term for the goods referenced in this Agreement is FCA Shipping Point (Veralase Danvers, MA). For international shipments, the delivery term for the goods referenced in this agreement is FCA. Title to the goods referenced in this Agreement and risk of loss or damage to the goods shall pass to buyer at the time Veralase completes its delivery obligations. Goods held by Veralase at Buyer's request beyond the scheduled delivery date shall be at Buyer's risk and expense. Freight and associated duties incurred by Veralase in shipping the goods, if agreed to by Veralase, shall be invoiced to Buyer. Buyer shall be responsible for expenses incurred by Veralase where, at Buyer's request, Veralase packs product in other than its normal manner.
- 3. Termination or Change.** Any order cancellation shall be subject to a minimum termination charge of twenty-five percent (25%) of the value of the sales terminated plus the price of services already performed, and for work in process, incurred costs and a reasonable allocation of general and administrative expenses. Changes to orders are subject to price changes at the discretion of Veralase.
- 4. Payment Terms.** Buyer shall pay 35% up front upon each purchase order and pay any payment balance upon shipment. Veralase reserves the right to suspend database services at any time for non-payment.
- 5. Taxes.** Any tax or related charge that Veralase shall be required to pay to or collect for any government in connection with this Agreement, including, without limitation VAT, sales tax or use tax (though excluding tax incurred based on the net income of Veralase) shall be billed to Buyer as a separate item and paid by Buyer, unless a valid exemption certificate is furnished by Buyer to Veralase.
- 6. Product Warranty.** To the extent allowed by local law Veralase warrants to Buyer that the goods referenced in this Agreement and delivered to Buyer will conform to the relevant technical specifications previously delivered by Veralase or, if not previously delivered, then delivered herewith. The foregoing warranty for laser products shall be valid for period of ninety (90) days from the date of delivery; the foregoing warranty for all other products shall be valid for a period of ninety (90) days from the date of delivery. In the event that any goods delivered by Veralase do not meet the foregoing warranty, such shall be deemed defective and Veralase will give an appropriate credit for the defective good(s) to buyer or, at Veralase's expense and option, repair or replace the defective good(s). Either of these alternatives shall be Buyer's sole and exclusive remedy in the event of delivery of defective good(s). The foregoing warranty is Veralase's sole warranty with respect to any goods delivered to Buyer hereunder and is conditioned on (i) all claims regarding any defective goods must be made in writing to Veralase within ninety (90) days after delivery of the relevant goods (laser products) or ninety (90) days after delivery of the relevant goods (all other products), and (ii) the defective goods shall not have been damaged or destroyed by Buyer or its personnel. This warranty applies only to Buyer and may not be assigned or extended by Buyer to any of its customers or other users of the goods. This warranty does not extend to any system into which the goods are incorporated. Veralase shall be allowed a reasonable period to investigate any claim relating to defective goods and shall be given access to Buyer's relevant records and data for this purpose. The above warranty does not apply to, and Veralase makes no warranties with respect to products that are software programs, experimental products or prototypes (all of which are provided "AS IS"). Any warranty is considered null and void if Buyer programs the product outside of normal operating conditions or opens the laser plastic case in any way
- 7. Limitation of Liability and Indemnification.** Buyer's sole and exclusive remedy and Veralase's sole and exclusive liability to Buyer for delivery of defective goods, whether brought under a claim alleging breach of contract, tort injuries, negligence theory, strict liability, class action, or any other legal theory, shall be limited exclusively to crediting Buyer in the amount of the purchase price paid for the defective good(s) or repairing or replacing the defective good(s), at Veralase's option. In no event will Veralase be liable to Buyer or any other party, under any circumstances for any special, consequential or indirect damages such as loss of capital, loss of use, substitute performance, loss of production, loss of profits, loss of business opportunity, or any other claims for damages or for any aggregate damages of any kind or nature in excess of the amounts paid under this Agreement for the specific product units giving rise to such damages. The warranty and remedies provided in Sections 6 and 7 of this Agreement shall apply to the exclusion of any other warranties (express or implied, including the warranties of merchantability and fitness for a particular purpose) or remedies that might otherwise be available under applicable law, notwithstanding the fact that other damages or injuries might be reasonably foreseeable. No statement made by any Veralase employee or other representative should be interpreted as expanding the scope of the warranty provided herein. Buyer shall indemnify and hold harmless Veralase and its directors, officers, employees and agents, from and against third party claims for actual losses or damages, liabilities, penalties, demands, suits or actions, and related costs and expenses (including, without limitation, reasonable out-of-pocket counsel fees) for injury to or death of any person arising out of the use of any Buyers product incorporating the Veralase laser diodes that are the subject of this Agreement, except to the extent that the claim that arises solely as a result of a manufacturing defect in such Veralase laser diodes. The total value of any such claim is limited to the value of defective Veralase parts shipped as stated on the Veralase invoice. Veralase product is not qualified or certified for any human or animal use and it is Buyer's sole responsibility to gain the necessary legal approvals to purchase and use Veralase product according to local laws and regulations. Veralase product is strictly intended for controlled R&D usage under the appropriate legal approvals.
- 8. Intellectual Property Warranty & Indemnity.** With respect to intellectual property and industrial property matters, Veralase's sole and exclusive liability is to indemnify Buyer only against valid claims based upon infringement of validly issued U.S. patents and then only with respect to goods comprising Veralase's regularly established line of products and only when such goods are used for normal purposes in the form in which sold by Veralase. This indemnification does not apply to patents covering composite structures or systems into which the goods referenced in this Agreement may be incorporated by Buyer. Veralase's sole obligation under this indemnification shall be the assumption of the defense of any such suit brought against Buyer. Veralase shall be given exclusive control of the defense of such claim, including settlement, and Buyer, at its own cost, shall assist Veralase in the conduct of such defense. Veralase's total liability hereunder shall be limited to its out-of-pocket costs up to, but not exceeding, the amount paid by Buyer as the purchase price attributable to the goods that are the subject of the claim or claims. Buyer assumes and will hold Veralase harmless against any patent liability for products manufactured to Buyer's design or specifications or specially designed by Veralase to meet Buyer's requirements. Buyer grants to Veralase a royalty-free right to use, for the purpose of making the goods and selling them to Buyer, any intellectual property or industrial property right that Buyer owns or to which Buyer has licensing, sublicensing or "have made" rights. Buyer agrees not to reverse engineer any aspect of Veralase product.
- 9. License.** Buyer is provided a non-exclusive license to use Veralase software (including all software, firmware and database functionality used with the Veralase product) only for non-commercial R&D purposes except such license does not apply to R&D for at-home, non-prescription, cosmetic applications. For any R&D performed by Buyer (or by Buyer's employees, associates, or anyone Buyer consigns or sells Veralase product to) which is directly or indirectly applicable to at-home, non-prescription, cosmetic applications, Buyer grants Veralase an exclusive, transferable, unrestricted license of all intellectual property including disclosure of results and trade secrets of all work for such R&D.
- 10. Indemnification.** In the event of any indemnification claim hereunder, the party seeking indemnification shall: (a) promptly provide the other party with notice, in writing, of the claim that is the subject of such indemnification request; (b) provide reasonable assistance and co-operation to the indemnifying party in connection with the indemnifying party's defense of such claim; and (c) permit the indemnifying party to control the defense of such claim. The indemnifying party may not resolve any such claim without notice to the indemnified party and shall not enter into any claim resolution or settlement that affects the indemnified party's rights or interest without the indemnified party's prior written approval. The indemnified party may employ counsel, at its own expense, to assist it with respect to any such claim.
- 11. Export Control.** Buyer acknowledges that the goods referenced in this Agreement are subject to export control laws and regulations of the United States of America. Buyer agrees that it will not use, distribute, transfer, or transmit the goods except in compliance with such laws and regulations.
- 12. Assignment.** Buyer shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of Veralase. This includes the sales of Veralase product. Any attempted assignment without Veralase's consent shall be void and ineffective.
- 13. Non-Waiver.** No course of dealing or failure of either party to strictly enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.
- 14. Excuse of Performance.** Except with respect to Buyer's obligation to make timely payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, nature or the public enemy, inability to secure material or transportation facilities, inadequate yield of products despite Veralase's reasonable efforts, act or omission of carriers or any other causes beyond its reasonable control.
- 15. Choice of Law.** This Agreement and the performance of the party's obligations hereunder shall be governed by the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.
- 16. Entire Agreement.** Except for any written agreement between the parties relating to confidentiality of proprietary information, the terms and conditions contained in the Agreement supersede all prior oral or written understandings between Buyer and Veralase and shall constitute the entire Agreement with respect to the subject matter of this Agreement. This Agreement shall not be modified or amended except by writing signed by a duly authorized officer of Buyer and Veralase.