

LYDECH'S TERMS AND CONDITIONS OF SALE

- DEFINITIONS:** a) "Seller", "us" or "our" means Lydech Thermal Acoustical, Inc. ("Lydech") or the subsidiary of Lydech selling our products (hereinafter "Products") or services (hereinafter "Services"); b) "Buyer", "you" or "your" means the party buying Products or Services; c) "Terms" means Lydech's Terms and Conditions of Sale; d) "Party" means Seller or Buyer, and "Parties" means Seller and Buyer; e) "Agreement" means the written documentation that Seller issues to you when selling our Products or Services; f) "Order" means the written documentation that Buyer issues to us when buying our Products or Services.
- TERMS OF AGREEMENT:** When you buy our Products, you are agreeing to these Terms. Nothing you send us will change these Terms (e.g., your purchase orders with different terms and conditions). If you object to any of these Terms, your objection must be specifically brought to the attention of Seller in writing, separate from any Order or other printed form. Your objections shall be deemed proposals for different terms and may be accepted only by a written addendum to Seller's Terms and Conditions of Sale executed by you and an authorized representative of Seller. **SELLER'S AGREEMENT TO SELL PRODUCTS TO BUYER IS EXPRESSLY CONDITIONED ON BUYER'S AGREEMENT TO THESE TERMS AND CONDITIONS. SELLER EXPRESSLY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY OF YOUR DOCUMENTS, WHETHER RECEIVED BEFORE OR AFTER YOUR RECEIPT OF THIS AGREEMENT.**
- PRICES:** The price shall be Seller's quoted price (which expires after 30 days), or if none, Seller's published prices on the date of the order. Unless otherwise agreed, prices quoted do not include shipping costs or any taxes or VAT, now or hereafter imposed, directly or indirectly, by any government authority or agency. If any of these costs are applicable, they will be added to the invoice. Where Buyer requires packaging other than standard packaging, the expense will be charged to the Buyer. To the extent permitted by applicable law, Seller reserves a security interest in any Products sold to the extent of the invoiced amount to secure payment of Buyer's obligation. If Buyer defaults, Buyer agrees to make the Products available so that Seller may peaceably repossess. A copy of the invoice may be filed with the appropriate agency(ies) at any time as a financing statement. At Seller's request, Buyer will execute any instrument Seller requires to perfect its security interest. Unless otherwise agreed in writing or prohibited by applicable law, prices on any undelivered Products are subject to further increase upon written notice: (a) due to increase in cost to Seller of raw materials; (b) as a result of restrictions or regulations imposed under any agreements, codes, licenses, laws decrees or orders; (c) as a result of increase in labor costs; or (d) due to variations in exchange rates, provided that this clause shall not be operated to fix a price in violation of any price regulations of the U.S. Government.
- TERMS OF PAYMENT:** Unless otherwise agreed in writing, payment shall be net cash thirty (30) days from the date of invoice. Buyer shall have no right of setoff and invoices shall not be subject to dispute after payment is due. Products exported may be subject to a down payment, with the balance payable through an irrevocable letter of credit established through a bank acceptable to Seller. The obligation to make payment shall continue without regard to any warranty obligations made hereunder by Seller and without regard to whether Buyer has made any inspection of the Products. Seller shall have the right, in its sole discretion, to terminate the Agreement or require payment before shipment or payment via letter of credit if it determines that Buyer is delinquent in payment, financially unstable or will exceed the credit limit. A finance charge of one and one-half percent (1 1/2%) per month (or the highest rate allowed by local law, whichever is lower) will be applied to any outstanding balance. Buyer shall pay to Seller any expenses Seller incurs for collection of money due and unpaid, including reasonable attorney's fees and costs. Buyer authorizes its creditors to disclose to Seller information concerning Buyer's credit worthiness. By submitting any Order or other document to Seller, Buyer represents that it is solvent for the purposes of U.C.C. Section 2-702 and that it is not insolvent as defined by U.C.C. Section 1-201 (23). In the absence of written notification of insolvency, the transmission of any writing by Buyer to Seller during the course of performance of the contract will be understood to constitute a written representation of continued solvency for the purposes of U.C.C. Section 2-702(2).
- ORDERS AND DELIVERY:** The accuracy and sufficiency of Buyer's Orders are the responsibility of Buyer. Shipping dates are approximate, and time shall not be of the essence. **SELLER DISCLAIMS ALL LIABILITY FOR GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF DELAYS IN DELIVERY.** If shipment is delayed for over one hundred and twenty (120) days, Buyer may reject the Products. Unless otherwise provided, Seller shall have the right to make shipment in installments, and delay in shipment of any installment or failure to ship any installment shall not relieve Buyer of its obligation to accept remaining installments. Where special delivery is required, the expense involved will be charged to Buyer. Orders are subject to a ten percent (10%) over-run or under-run. Unless otherwise stated in the Order, Products shall be shipped EXW Seller's shipping points. Risk of loss and title of Products shall pass to Buyer when Products are loaded for shipment. If shipment is made in reusable containers, Buyer shall be charged for any unreturned or damaged containers. Return Product accepted by Seller may be subject to a reasonable restocking charge.
- FORCE MAJEURE:** Neither Party shall be held responsible for any delay or failure to perform its obligations hereunder (other than payment obligations) in whole or in part due, directly or indirectly, to matters outside of its control, including without limitation, war, insurrection, pandemics, epidemics, flood, acts of God, accidents, power failure, shortage of transportation, terrorism, sabotage, blockades, embargoes, federal, state, municipal, or any other governmental action or regulation, import or export restrictions, explosion, fire, damage to, or destruction in whole or in part of merchandise or manufacturing plant, lack of, or inability to obtain (due to events out of its control), materials, labor, fuel or supplies, restraining orders or injunctions of any court or judge, or any other causes, events, contingencies or circumstances, regardless of their dissimilarity to the foregoing, deemed to be impracticable or impossible under the law. If any shipment is delayed six (6) or more months due to a force majeure event, either Party shall have the right by written notice to the other to cancel that shipment, the balance of any Order and the Agreement and, in such event, neither Party shall be liable to the other for any losses or damages arising out of such cancellation.
- BUYER DELAY:** If Buyer is unable or unwilling to accept delivery of Products at time of completion, Seller shall invoice Buyer for the full purchase price. Products held for Buyer shall be held at Buyer's sole risk and expense. Buyer's wrongful rejection of

LYDECH'S TERMS AND CONDITIONS OF SALE

Products or attempted cancellation shall entitle Seller, in addition to any other damages, to the price of raw materials, work in process and finished goods inventory which cannot be resold or if resold, a minimum of 15% of the price of the Products as liquidated damages. Seller shall have the right to prove higher damages and the Buyer shall have the right to prove lower damages.

8. **TOOLS:** Unless otherwise agreed, Seller shall retain title to, and possession shall be returned to Seller upon termination of, any models, drawings, patterns, dies, molds, jigs, fixtures and tools relating to any Order.
9. **WARRANTY:** The following warranty applies to Seller's Products only and excludes Seller's Services. If full payment for the Products is received, Seller warrants that at the time of shipment and for a period of one (1) year thereafter (unless a different period is specified by Seller) its Products (not including any parts, materials or equipment not manufactured or supplied by Seller) shall be substantially free of material defects in workmanship and material under normal use and service and shall substantially conform to contract specifications, subject to Seller's standard tolerances for variations. Buyer agrees to inspect the Products prior to acceptance and upon receipt and to give written notice within fifteen (15) days to Seller of any claim that the Products breach any warranty provided herein. Seller will be afforded a prompt opportunity to inspect the Products. If Buyer shall fail to give such notice or provide such opportunity to inspect, the Products shall be deemed accepted and to conform to the terms of the Agreement and Buyer shall be bound to accept and pay for the Products in accordance with the terms of the Agreement. Use or processing of the Products shall be deemed an unconditional acceptance. Defects in part of the Products shipped do not entitle rejection of the entire shipment. Complaints do not affect Buyer's obligation to pay for the Products. Buyer's failure to provide timely notice shall constitute a waiver of its claims. Buyer expressly waives any rights Buyer may have to revoke or refuse acceptance after such fifteen (15) day period. For a breach of warranty claim, Seller may, at its option, repair or replace the nonconforming Products or credit the account for the value of the nonconforming Products. The aforesaid obligations of Seller are expressly agreed by the Parties to be the limit of Seller's liability and Buyer's sole and exclusive remedy. Should this sole and exclusive remedy fail of its essential purpose, however, Seller will return Buyer's purchase price minus the reasonable value of Buyer's use of the Product. Notwithstanding anything herein contained to the contrary, the liability of Seller for any and all claims for direct damages arising out of or in connection with the Products and the use thereof shall under no circumstances exceed the sum of Buyer's payments for the Products that are the subject of the claim. **IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF USE OR LOSS OF PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES, EXCEPT AS REQUIRED BY LAW. ALL OTHER WARRANTIES, DIRECT OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.** Our warranties extend only to the original Buyer and cannot be transferred. This warranty is inapplicable to the extent Buyer has selected materials or designed the Product. In no event shall Seller be liable for any defective Product if examination discloses that the Product has been taxed beyond its normal capacity or the defective condition of such Product was caused by willful damage, failure to follow instructions, abnormal working conditions, misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. Any advice furnished by Seller as to any use of the Products by Buyer, any samples provided by Seller, and any Services provided by Seller are offered "as is" without warranty of any kind, and shall not affect the limitations on Seller's warranties or Buyer's agreement to indemnify. Buyer acknowledges that Seller shall have no liability to Buyer for any harm or loss caused by advice received by Buyer from any of Seller's agents or employees.
10. **SAFETY & HEALTH INFORMATION:** Upon request by Buyer, Seller will provide applicable information (including but not limited to Safety Data Sheets) and warnings concerning the safety and health aspects of its Products. Buyer agrees to communicate such information and warnings to Buyer's employees, agents, contractors and subsequent buyers, and to require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handle such Products.
11. **EXPORTS:** Buyer agrees to fully comply at all times with all applicable import and export control laws and undertakes not to sell, supply, transfer, transmit, export or re-export any Products or their related technology in violation of the export control laws. Buyer shall not sell, supply, transfer, transmit, export or re-export any Products or their related technology to any non-US government if Buyer knows or has reason to know that the Products or technology will be used for military end use. Buyer confirms that the Products will not be used for purposes associated with chemical, biological or nuclear weapons or missiles capable of delivering such weapons, nor will they be resold by Buyer knowingly for such intended or likely purpose. Buyer confirms that the Products will not be re-exported or otherwise re-sold or transferred by Buyer to a destination subject to UN, EU or OSCE embargo where that act would be in breach of the terms of that embargo. Buyer confirms that the Products, or any replica of them, will not be used by Buyer in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. Buyer shall be responsible for complying with any law governing the importation of Products into the country of destination and for the payment of any duties on them. Upon Seller's request, Buyer agrees to complete export due diligence certification paperwork to document its compliance with all export laws and regulations and return promptly to Seller.
12. **INDEMNIFICATION:** Buyer, if a reseller, shall include in its terms and conditions of sale an effective disclaimer of warranties and limitations of liability at least as restrictive as those contained herein. In any event, **BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ALL CLAIMS AND LIABILITY ARISING: (1) OUT OF ANY PRODUCT MADE IN WHOLE OR IN PART FROM THE PRODUCTS SUPPLIED UNDER THIS AGREEMENT AND (2) AS A RESULT OF USE OR POSSESSION OF THE PRODUCTS SUPPLIED UNDER THIS AGREEMENT.** With respect to Products manufactured solely to Seller's designs or specifications, Seller shall defend any action

LYDECH'S TERMS AND CONDITIONS OF SALE

brought against Buyer claiming that such Products are an infringement of any patent and Seller will pay any costs and damages finally awarded against Buyer in any such action, under the following conditions: (a) Seller is notified promptly in writing by Buyer of any notice of such claim, (b) Seller has sole control of the defense in any action on such claim and all negotiations for its settlement and compromise, and (c) should Seller's Products become, or in Seller's opinion are likely to become, the subject of a claim of infringement of a patent, Seller will have the option of replacing or modifying the same so that it does not infringe or to accept its return and grant to Buyer a credit for such Products. This states the entire liability of Seller with respect to infringement of patents by Seller's Products or any parts thereof. Buyer shall indemnify, defend and hold Seller harmless against any damages, costs or losses resulting from any suit or proceeding brought for infringement of patents or for unfair competition (1) relating to the use or sale of any of Seller's Products in any combination, method, or process and/or (2) arising out of compliance by Seller with Buyer's designs, specifications or instructions, including claims for patent or copyright infringement. If such a claim is brought against Seller by an agent or employee of Buyer, Buyer agrees to defend, indemnify and hold Seller harmless from and against any and all liability, loss, damages, and expense relating to the claim.

13. **INTELLECTUAL PROPERTY:** Buyer acknowledges that all intellectual property rights relating to Seller's Products, as between Buyer and Seller, are solely and exclusively owned by Seller. Unless otherwise agreed to, Seller's sale of Products to Buyer only grants Buyer a limited, non-transferable right under such intellectual property, for only Buyer to use the quantity of the Products that Buyer has purchased. Buyer may only use Seller's intellectual property for the purposes of the Order and not for any other purpose. Buyer expressly agrees that Buyer will not reverse engineer, disassemble, or decompile our Products. Seller does not warrant that it has verified the possible existence of third-party intellectual property rights which might be infringed as a consequence of the sale of the Products and Buyer should conduct its own search for such infringement. The sale of Products does not convey any license under any intellectual property rights relating to the application of the Products and Buyer expressly assumes all risk of intellectual property infringement by reason of its importation or use of the Products in any of its processing operations.
14. **CODE OF ETHICS:** Buyer shall adopt and comply with a policy statement or code of conduct regarding business ethics or elect to comply with Lydech's Code of Ethics and Business Conduct ("Code"), a copy of which is available at www.Lydech.com. This Code will be suitable for the Buyer's business and at a minimum will require compliance with all applicable laws and regulations; assure a safe, healthy work environment; prohibit the use of child or forced labor; provide for protection of the environment and minimization of waste, emissions, energy consumption; minimize the use of materials of concern and prohibit engagement in corrupt practices (e.g., facilitating, offering or paying any bribe). This provision confers no rights on third parties.
15. **COMPLIANCE WITH STATUTES AND REGULATIONS:** Seller makes no warranty that its Products shall conform to any law, statute, ordinance, regulation, code or standard unless expressly stated in the specifications or order acknowledgement. Buyer warrants and certifies that it will comply with all applicable national, state, provincial and local laws, statutes, rules, regulations, orders, and ordinances applicable to the manufacture, shipment and supply of goods using Seller's Products, including but not limited to: (a) all anti-bribery statutes, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act; in addition, Buyer shall not offer gifts of any nature, including holiday gifts or entertainment, above a nominal value; and (b) all Equal Employment Opportunity statutes and orders, now in effect or later enacted, of the United States of America and of any state or political subdivision of any state, including but not limited to statutes, rules, regulations, and orders pertaining to labor, wages, hours and other conditions of employment, wage and price ceilings, if applicable, and the Fair Labor Standards Act, as amended. Buyer agrees to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, gender, color, national origin, age, disability, genetic information or covered veteran status. Further, Buyer agrees to take action to employ, advance in employment, and otherwise treat known qualified individuals with disabilities without regard to their physical or mental disability, covered veterans, minorities and females where underutilization exists in comparison to their representation in the local workforce population. These actions will include all human resources selection and decision practices such as demotion, transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. These requirements are found in 4 main sources: Executive Order 11246, the Vietnam Era Veteran's Readjustment Act, Section 503 of the Rehabilitation Act of 1973, and the American Recovery and Reinvestment Act of 2009 and all other regulations by inference. In addition, no action will be taken to the extent it is forbidden by the legislation applicable in the corresponding country.
16. **CONFLICT MATERIALS:** Seller recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant risks associated with sourcing Cassiterite (and its derivative tin), Columbite-tantalite (or 'coltan' and its derivative tantalum), Wolframite (and its derivative tungsten) and Gold (collectively, the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries. Accordingly, Seller represents that it will take all measures as are necessary to comply with the Act and its implementing regulations, as they may be amended over time.
17. **TOXIC, HAZARDOUS OR CARCINOGENIC SUBSTANCES: REACH:** Seller represents and warrants that: (a) the Product(s) and any substances contained therein are not prohibited or restricted by, and are supplied in compliance with, any laws or regulations of the United States, the European Union ("EU"), and nations adopting legislation similar to that of the EU; (b) nothing prevents the sale or transport of the Product(s) or substances contained therein in the United States, the EU and nations adopting legislation similar to that of the EU; (c) all such Product(s) and substances are appropriately labeled, if labeling is required, and have been pre-registered and/or registered and/or authorized under the EU Registration, Evaluation, Authorization and Restriction of Chemicals regulation ("REACH") if pre-registration, registration and/or authorization is required; and (d) in accordance with the restrictions set forth in the Recycling of Hazardous Substance ("RoHS") directives, the Product(s) and any substances contained therein do not include hazardous substances banned under RoHS. In addition to complying with REACH and

LYDECH'S TERMS AND CONDITIONS OF SALE

RoHS, Seller shall timely provide Buyer with all relevant information on the Product(s) necessary for the Buyer and/or any downstream user (as defined in Article 3(13) of REACH) to timely and accurately fulfill their obligations under REACH and RoHS. Seller shall take all other measures as are necessary to comply with REACH and RoHS and their respective implementing regulations, as they may be amended over time. Seller shall bear all costs, charges and expenses related to REACH and RoHS, including the pre-registration, registration, evaluation and authorization of the chemical substances that are the subject of the Agreement or Order.

18. **CONFIDENTIALITY**: Any confidential, proprietary or non-public information, including drawings, descriptions, specifications and any other Intellectual Property made available to Buyer or created for or by Seller or its affiliates related to these Terms or an Order ("Confidential Information") is the property of Seller. Buyer and its representatives shall protect Seller's Confidential Information, and shall not disclose, copy, reproduce, reverse engineer or transfer Confidential Information to any third parties or use Confidential Information for purposes other than fulfilling its obligations under each Order. Seller will be entitled to injunctive relief for any violation of this Section, without having to post bond or establish the insufficiency of a remedy at law.
19. **BUYER'S DEFAULT**: Buyer shall be liable to Seller for all damages or losses including loss of reasonable profits, and for costs and expenses, including attorney's fees, sustained by Seller and arising from Buyer's default under, or breach of, any of these Terms. In the event of any such default or breach, Seller may, without any obligation or liability to Buyer, terminate the Order or Agreement forthwith by written notice to Buyer and such action by Seller shall not be deemed a waiver of any right or remedy with respect to such default or breach. In addition to its other remedies, Seller may, without any obligation or liability to Buyer, terminate any Order or Agreement if Buyer shall become bankrupt, insolvent, makes an assignment for the benefit of creditors or a receiver is appointed for Buyer, or Buyer is acquired or sold in whole or in part.
20. **ADDITIONAL TERMS AND CONDITIONS**
 - (a) **Assignment and Delegations**: The Parties' rights and obligations shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, directors, officers, employees and legal representatives. To the extent permitted by applicable law, Buyer will not assign any rights or delegate any duties without the prior written consent of Seller. Seller may perform its obligation through its affiliates or subcontractors. Seller and Buyer are independent contractors and neither is authorized to act on behalf or bind the other.
 - (b) **Modification, Termination and Waiver**: In the event of an agreed upon termination of the Agreement or Order, Buyer shall pay for (i) the cost of any raw materials and any work in process, and (ii) for finished goods, the prevailing contracted purchase price; in each case which is not usable or salable by Seller. No waiver of any default hereunder shall be deemed a waiver of the obligation of future compliance.
 - (c) **Sole Agreement**: Unless otherwise agreed in writing, this Agreement constitutes the entire agreement between Seller and Buyer, and supersedes any previous agreement, representation or warranty, whether express or implied, regarding the Products. The Parties also intend that this complete, exclusive and fully integrated statement of their agreement may not be supplemented or explained or interpreted by any evidence of trade usage or course of dealing. Buyer acknowledges that no representations, understandings, conditions, or agreements have been made or relied upon other than those stated in the Agreement.
 - (d) **Governing Law**: The interpretation and performance of this contract shall be in accordance with and shall be controlled by the laws of the State of New York without regard to principles of conflicts of law, except that the United Nations Convention on the International Sale of Goods shall not apply to this contract or to the transactions between the Parties. Buyer consents to the exclusive jurisdiction and venue of the federal and state courts located in New York.
 - (e) **Severability**: If any provision of this Agreement is held by a court to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected. The provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.
 - (f) **Notice**: The Parties shall give all notices in written English by either personal delivery, facsimile, electronic mail, certified mail, postage prepaid and return receipt requested, or overnight courier to the Party's address specified on the face of the Order, or to the address that a Party has notified to be that Party's address for the purposes of this section, effective on receipt by such Party.

[End of Lydech's Terms and Conditions of Sale]