

AvL Technologies Inc.
TERMS AND CONDITIONS

1. Definitions.

“Seller” means the AvL Technologies, Inc.

“Buyer” means the person, firm or company specified in the Contract, Purchase Order, or Order to be supplied with the Goods and/or Services.

“Purchase Order” means any proposed contract, order, or other document bearing a unique reference number detailing the Goods and/or Services to be supplied, the price thereof and other relevant details of the agreement for sale and purchase to which these Terms and Conditions apply.

“Goods” means the equipment, materials and/or other items or services to be supplied pursuant to the relevant Purchase Order.

“Services” means the installation, testing, engineering, or other agreed technical assistance to be supplied pursuant to the relevant Purchase Order.

2. Scope of Agreement.

- a) These Terms and Conditions, together with the Purchase Order and any specifications, drawings and other documents incorporated into the Purchase Order in a writing and agreed to by both parties, shall constitute the entire agreement and contract between the Seller and Buyer. These Terms and Conditions shall supersede and take precedence over any other past or proposed terms or conditions in any correspondence, discussions, or implied by trade custom practice or course of dealing, and any such prior representations or understandings and any such purported provisions to the contrary are hereby expressly excluded.
- b) The Goods shall conform to Seller’s standard specifications in existence at the time delivery is made unless otherwise set forth in the Purchase Order and agreed to in writing by both parties.
- c) Each Purchase Order is subject to acceptance by Seller. No Purchase Order shall be deemed a contract until and unless Seller’s acceptance in writing. Any additional or different terms proposed by Buyer are rejected unless expressly approved in writing by Seller. No communication that in any way differs from or adds to the Purchase Order, irrespective of whether or not Seller seasonably objects thereto, will be binding upon Seller unless such different or additional terms are incorporated into a writing signed by both parties, making express reference to the Purchase Order.
- d) The Purchase Order is subject to all laws and regulations of any applicable agency in the United States Government responsible for the administration of the United States export control laws and regulations, and to the United States Foreign Corrupt Practices Act 1977, as amended.
- e) The Goods and/or Services under the Purchase Order may require United States Government authorization for export to certain destinations, for use by certain end-users, and/or for a particular end-use. When an export license is deemed necessary, the Buyer shall provide on demand an End Use Statement and incorporate it into the Purchase Order. When Goods and/or Services are exported under a license, the same may not be resold, diverted, transferred, or otherwise be disposed of in any

other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written consent of the United States Department of State, and or any other applicable agency.

3. Quotations.

A quotation by the Seller does not constitute acceptance of a Purchase Order and the Seller reserves the right to withdraw or amend any quotation at any time prior to the Seller's acceptance of a Purchase Order from Buyer.

4. Prices.

Unit prices apply only to the specific quantities and delivery schedule shown on the Purchase Order. Any variations in quantity, specifications and/or date of delivery may result in a change to the unit price described in the Purchase Order.

All prices quoted are Free-Carrier Asheville (FCA) or Ex Works (EXW) AvL Technologies, 15 North Merrimon Avenue, Asheville, NC 28804, USA.

Pricing for all Goods and/or Services may be revised at any time; Subsequent Purchase Orders for the same Goods and/or Services are subject to the revised pricing.

All prices are exclusive of all sales, use and other taxes, duties or charges, domestic or foreign. Buyer shall pay or, upon receipt of an invoice from Seller, shall reimburse within ten (10) days Seller for all such taxes, duties or charges levied or imposed on Buyer or required to be collected by Seller resulting from this transaction or any part thereof.

5. Terms of Payment.

USA DOMESTIC ORDERS

- a) Unless otherwise agreed in writing, payment equal to 50% of the total amount of the Purchase Order shall be remitted by Buyer upon acceptance of the Purchase Order by Seller. Payment of all remaining outstanding amounts shall be made prior to shipment.
- b) If the Buyer requests a delay of shipment, payment shall be made based on the Purchase Order price and percent of completion of all Goods and/or Services to be provided under the Purchase Order (including profit), plus the cost of any materials or subassemblies purchased to complete the Purchase Order, within ten (10) days of notice to Seller of Buyer's delay request. Buyer shall also remit to Seller, upon request, storage costs for Goods and/or materials required to fulfil the Purchase order.
- c) If, in the judgement of Seller, the financial condition of the Buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may, upon ten (10) days' notice, require full or partial payment in advance, regardless of the payment terms originally specified. In the event of bankruptcy or insolvency of Buyer, Seller may cancel any order then outstanding and receive reimbursement for its cancellation or termination liability charges.

- d) Each shipment under a Purchase Order shall be considered a separate and independent transaction and payment shall be made accordingly. Seller reserves the right to ship to its order and make collection by sight draft, with bill of lading attached.

Prior to shipment, payment may be made by electronic wire transfer to the bank account of AvL Technologies as specified in the Purchase Order.

- e) All amounts past due shall bear interest at the rate of 1% per month, or the highest maximum rate of interest allowed by law, from the date due until paid.
- f) Buyer agrees to pay legal fees and other costs incurred by the Seller to collect any unpaid balance due or otherwise enforce the rights of Seller hereunder by legal proceedings or otherwise.

INTERNATIONAL ORDERS

Unless otherwise agreed in the Purchase Order, Buyer will provide the Seller 50% down payment, balance due prior to shipment. If Buyer delays shipments, Buyer shall in addition pay all charges for handling and monthly storage fees at the current market rates. These charges will be invoiced separately and payment in full must be received prior to shipment. Warranty commences on date of shipment. The other provisions set forth in this Article 5 under US Domestic Orders also apply, except as modified in this paragraph.

6. Delivery.

- a) Delivery time quoted is Seller's best estimate, any delivery based on a time period shall begin at acceptance of the Purchase Order and Buyer's down payment. Seller shall not be liable for any delay in performance or inability to perform occasioned by any Force Majeure conditions beyond the control of Seller, its suppliers or subcontractors.
- b) Unless otherwise specifically provided, delivery of the Goods shall be made FCA or EXW AvL Technologies, 15 North Merrimon Avenue, Asheville, NC 28804, USA. at which time the title and risk of loss shall pass to the Buyer, notwithstanding the fact that Seller may have selected the Carrier. Seller shall in no way be responsible for the safe arrival of the shipment. Title shall pass to Buyer regardless of any provisions for payment of freight or insurance by Seller.
- c) In any case where Goods are sold on the basis of any other international trade terms, the meaning of such term contained in INCOTERMS (2000) shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any provisions contained in these conditions.
- d) In the case that the Purchase Order involves more than one delivery, and default is made in payment on the due date, the Seller shall have the right to suspend all or any further deliveries pending payment or to terminate the Purchase Order in its entirety by notice in writing to the Buyer. Cancellation of the Purchase Order is in addition to, not in place of, any other remedy available to Seller.

7. Logo Policy

- a) “AvL Technologies” will be embossed on the side plates of the positioners. This is done on all positioners, even if it will have a reflector of some other brand installed later by our customer. On SNG positioners the embossed letters are highlighted in blue. On broadband antennas, the embossing is not highlighted.
- b) When a reflector is provided by Seller, the product is considered an antenna system, and the reflector will have an appropriate sized “AvL Technologies” logo in the upper part of the reflector. On SNG and vehicular mounted antennas the size is such that it can be read from standing on the ground.
- c) On ground based flyaway or case-based antennas, the “AvL Technologies” logo will be smaller and of same proportion of brand names on commercial products.
- d) If a customer requests that no company name on the front of the reflector we assume no names will be allowed, including the system integrators name. We will move ours to the rear of the reflector. We will not remove our name completely for any commercial customer.
- e) Side plates without the “AvL Technologies” logo constitute a special order and will extend the delivery date and increase the price.

8. Cancellation and Returned Goods

- a) The Buyer may cancel an order only upon written notice sixty (60) days prior to shipment, and upon payment to Seller of all reasonable cancellation and/or termination liability charges.
- b) Purchase Orders which are cancelled prior to shipment, if standard products, are subject to a standard minimum 25% restocking charge for those items already in production or in finished goods inventory awaiting shipment to Buyer.
- c) Purchase Orders which are cancelled prior to shipment, if those items are “special” or “custom” items designed or modified to the Buyer’s specifications are essentially non-cancellable for that portion in production or in finished goods inventory awaiting shipment to the Buyer, and are subject to full recovery costs, including by way of example, the full cost (including shipping) of parts, materials and subassemblies ordered to fulfil the Purchase Order and profit, or an agreed payment in accordance with a termination liability payment schedule agreed to in the Purchase Order.
- d) Purchase Orders that are cancelled after shipment to Buyer, whether standard or special, remain the property of the Buyer and subject to payment in full.

9. Packaging and Shipping.

- a) Unless otherwise specified, prices are quoted exclusive of shipping, taxes, duties, or other charges. Equipment for Domestic (CONUS) sites shall be shipped in standard commercial packaging for truck or air transport only. Export packing (sea container or air) will be quoted upon request. If special packaging or handling is required the cost of the special packaging will be separately invoiced to the Buyer.

- b) Unless expressly prohibited by the Purchase Order, partial shipments shall be accepted.
- c) Unless agreed in writing prior to shipment, Buyer shall have sole control and discretion with respect to the mode of transportation, routing and any other matter connected with, related to or involved in transportation of the Goods, otherwise Seller may accept these responsibilities.
- d) Shipping dates specified herein or otherwise communicated to Buyer are approximate only. Seller does not and shall not guarantee any shipping dates unless such guarantee and the terms thereof are specifically agreed to in writing. Any such guarantee shall be strictly limited to the exact terms so stated.

10. Inspection.

Unless otherwise agreed in writing, the Goods are subject to Seller's standard inspection and/or testing at place of manufacture. Buyer may inspect Goods and/or witness testing at the place of manufacture or at such other place as Seller, in its sole discretion, shall designate, and Buyer's consequent approval or rejection of the Goods must be made prior to shipment. When Buyer has inspected the Goods prior to shipment, Buyer shall have no right whatsoever to inspect, reject or revoke its acceptance of the Goods after shipment. Buyer is responsible for any charges associated with witnessed testing beyond the normal level of activity for routine test activities, as defined in the Purchase Order.

11. Delay and Force Majeure

The Seller shall not be liable for delays in the performance of its obligations and the date on which the Seller's obligations are to be fulfilled shall be extended for the period caused by the delay when the delay was due to causes beyond the Seller's control and not due to its fault or negligence, including, but not limited to, Force Majeure, defined as:

- a) Acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (De Jure or De Facto), wars (declared or undeclared), riot, revolution, hijacking, fires, strikes, labor stoppage, sabotage, epidemics, prohibition of import or export of goods or products, and interruptions of essential services and supplies such as electricity, communications, natural gas, fuels and water.
- b) Delays attributable to causes beyond Seller's reasonable control to timely obtain from suppliers or subcontractors necessary and proper materials, components, facilities, and, when the subcontractor has excusable causes as listed above and such items cannot be reasonably be obtained from another source.

Partial delay or failure of performance due to any of the aforementioned causes shall not in itself terminate the Purchase Order.

In the event Seller is affected in the performance of its obligations by any of the aforementioned causes, it shall give the Buyer prompt written notice of that fact together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Seller to remove such cause of non-performance and to minimize its effects, and shall continue the performance of its obligations under the Purchase Order.

12. Description and Data.

- a) Goods and/or Services will be supplied substantially as described in Seller's applicable brochures and data sheets and where the Seller is the manufacturer, the right is reserved to make design changes which however will not lower the performance of the Goods or increase the price. Where the Seller is not the manufacturer, Goods and/or Services will be those supplied to the supplier/manufacturer's current specification and data sheets.
- b) The Seller shall make every effort to ensure the accuracy of technical data or literature relating to the Goods, but the Seller (so far as permitted by law) accepts no liability for any damage or injury arising directly or indirectly or in consequence of any error or omission in such technical data or literature.
- c) It shall at all times be the Buyer's responsibility to ensure that the Buyer's specifications are correct and/or sufficient for the use intended by the Buyer.

13. Warranty.

Seller warrants the items ordered hereunder at the time of shipment to be free from defects in material, workmanship, and to conform to the Purchase Order specification. Seller's liability under this Warranty shall terminate one (1) year after the date of shipment. Some individual products may include extended warranties, as as may be agreed in the Purchase Order, and extended warranties may be purchased as requested and quoted. Written notice of any defects shall be given by the Buyer upon discovery and Seller shall promptly determine if the items are defective and, if so, correct such defects by repair or replacement, at its option, without charge.

IN NO EVENT SHALL SELLER'S LIABILITY UNDER THIS WARRANTY EXCEED THE COST OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE ITEM, OR THE TOTAL AMOUNT PAID BY BUYER FOR THE ITEM: UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

Warranty Procedure:

- Complete "Return to Manufacturer Authorization" (RMA) request; Upon receipt AvL will issue an RMA number in coordination with customer. The RMA request form can be found on-line at AvL's website (www.avltech.com/tnc.pdf).
- Inspection and evaluation of failed (or defective) product will be made within one week of receipt at AvL's manufacturing facility (Asheville, NC) or, at AvL's sole discretion, in the field at customer's location.
- Replacement (or repair, at AvL's sole discretion) of any AvL-manufactured product that is determined by AvL to be defective, or that has failed as a result of normal use: to be performed within two weeks of AvL evaluation (if materials are in stock) and includes cost of parts and labor.
- Return shipping via normal ground freight (or air freight, at AvL's sole discretion) of repaired system/hardware to customer, initiated within two business days of repair/replacement completion. International return shipping at Buyer's expense, unless otherwise agreed in writing.

Specifically excluded from this Warranty are:

- a) Defects or non-conformance caused by and resulting from improper operation, maintenance, or storage of the equipment.
- b) Items of characteristically indeterminate life, such as bulbs, fuses, paint, etc.
- c) Replacement (or repair) of any equipment not returned using an approved AvL RMA number (see above).
- d) Shipping to AvL for inspection, evaluation and repair/replacement; customer must return equipment in adequate commercial packaging.
- e) Damages due to the misuse, unapproved maintenance procedures, or improper handling.
- f) Failure of customer-furnished items.
- g) Travel expenses related to repair or replacement at customer's location (on site); customer must provide adequate facilities, access and personnel safety conditions to carry out this effort.
- h) Any failure arising from conditions not included or anticipated the Purchase order specifications, such as use of the Goods in environmental conditions that require special treatment or equipment.

THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NONCONFORMING ITEMS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. Patent and Copyright Indemnification.

If Buyer receives a claim that any product or part thereof manufactured by the Seller infringes a patent or copyright when used for its intended purpose, Buyer shall notify Seller promptly in writing and give Seller all available information, assistance and exclusive authority to evaluate, defend and settle such claim. Seller shall then, at its own expense and option, either (1) settle such claim, (2) procure for Buyer the right to use such product, (3) replace or modify the product to avoid infringement, (4) remove it and refund the purchase price less a reasonable amount for depreciation, or (5) defend against any such claim. If any court of competent jurisdiction holds (after all appeals) such product to constitute infringement, Seller shall pay any costs and damages finally awarded on account of such infringement, and if the use of such product is enjoined, Seller shall take at its option one or more of the actions under (2), (3) or (4) above.

The rights and obligations of the parties with respect to such patents and copyrights are solely and exclusively as stated herein.

The patent and copyright obligations cited above are in lieu of all other patent and copyright warranties whatsoever, whether oral, written, express or implied.

15. Sales Conveys No License.

The sale of the Goods covered by the Purchase Order does not convey any license, expressly or by implication, estoppel or otherwise, under any patent, copyright, or proprietary interests covering any equipment, assembly, system, circuit, combination, method or process in which such products may be used, notwithstanding the fact that such products may have been designed for use in, or may in any way be useful in such patented or copyrighted or proprietary equipment assembly, system, circuit, combination, method or process or may have been purchased and sold for such use. Seller expressly reserves all its rights under such patents, copyrights, or proprietary interests and Buyer agrees to respect

and protect such rights. Products supplied by Seller may not be modified without the prior written consent of Seller.

All materials provided by AvL, including brochures, product specifications, and manuals, are provided on a nonexclusive basis to customers and potential customers, and are protected by US and International copyright law; all rights, including preparation of derivative materials, are reserved by AvL Technologies, Inc.; any use shall include attribution of AvL Technologies, Inc. as the owner of the materials, and a notice that the information is subject to change and verification

16. License and Consents.

If any license or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Buyer, the Buyer shall obtain the same at its own expense and if necessary or so required shall produce evidence of the same to the Seller on demand.

17. Limitations and Liability.

Seller's liability for any claim of any kind including negligence, for any loss or damage arising from, connected with, or resulting from the Purchase Order, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, installation, operation or use of any equipment covered by or furnished under the Purchase Order, shall in no case exceed the purchase price of the Goods which gives rise to the claim.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, OR WARRANTY, OR NEGLIGENCE, OR OTHER ALLEGED ACTION, SHALL SELLER BE LIABLE FOR SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF USE TO THE EQUIPMENT OR AN ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWN-TIME COSTS, OR CLAIMS OF CUSTOMERS OR THE BUYER FOR SUCH DAMAGES.

18. Subcontracting.

The Seller reserves the right to sub-contact at its discretion any part of the work or the supply of any Goods and/or Services for which the Seller provides a quotation.

19. Termination.

The Seller may at its option terminate the Purchase Order upon the happening of one or the following events:

- a) The Buyer is in breach of any obligation to the Seller and such breach, where capable of remedy, not remedied within thirty (30) days from the date of notification from the Seller to the Buyer specifying such breach; or
- b) If the Buyer is insolvent, there is an appointment of a receiver for any part of the property of Buyer, an assignment for the benefit of creditors, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Buyer.

- c) Upon termination payment shall be due and payable based on Purchase Order price and percent of completion of all Goods and/or Services provided or to be provided under the Purchase Order (including profit), plus the cost of any materials or subassemblies purchased to complete the Purchase Order, within ten (10) days of termination.

20. Waiver.

The failure by either party to the Purchase Order to exercise or enforce any rights shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

21. Notices.

Any notice required or permitted to be given hereunder may be given by certified mail or personal delivery. Notice sent by certified mail shall be deemed to be served seventy-two (72) hours after placement into the airmails, postage prepaid to address. Until changed by written notice, given by either party to the other, the contract information of the parties shall be as specified in the applicable Purchase Order.

22. Governing Law.

The Purchase Order shall be construed according to the Laws of North Carolina without application of its conflicts of law provisions. Any legal action, including actions to enforce an Arbitration Decision, will be brought in the courts Buncombe County, North Carolina.

23. Arbitration.

The parties shall endeavour to first settle all disputes in connection with the Purchase Order through friendly negotiations. If no settlement can be reached, the case may then be submitted for arbitration in accordance with the Commercial Arbitration Rules promulgated by the American Arbitration Association. The Arbitration shall take place in Asheville, North Carolina or other site mutually agreed upon by the parties, and the decision of the Arbitrator(s), appointed in accordance with said Rules, shall be final and binding upon both parties, neither party shall seek recourse to a law court or other authorities to appeal for revision of the decision. Arbitration fees shall be borne by the losing party. In the course of arbitration, both parties shall continue to execute the Purchase Order except those issues under arbitration.

24. Export Licensing/ITAR Representation/Gratuities/Kickbacks.

The Buyer agrees to comply with all applicable U.S. export and import laws and regulations, including the International Traffic in Arms Regulations (ITAR) governing the export of technical data and the provision of defence services related to the Contract. Notwithstanding anything that may be to the contrary herein, the Buyer's obligation to adhere to U.S. export and import laws and regulations shall survive the expiration or termination of the Contract.

Buyer shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment under any government contract.

25. Government Terms and Conditions.

If the Purchase Order relates to a contract with the U.S. Government and the applicable Government Contract number is shown on Buyer's request for a proposal or on the Purchase Order, the clauses listed, appearing or referred to in the indicated paragraphs, or applicable portions thereof, of the applicable procurement regulations are incorporated herein and are a part of these conditions only to the extent applicable to the prime contractor, and as required to flow down to Seller.

26. Nondisclosure.

Buyer will not, without the prior written consent of the other, reproduce, use, or disclose to any employee or third party any proprietary information or data furnished by the other party. Any information or data must be clearly marked as proprietary to qualify for nondisclosure. This restriction does not apply to information or data: (i) in the public domain through no breach of this contract by the recipient, (ii) otherwise known to the recipient at the time of receipt without restrictions as to use or disclosure, or (iii) acquired by the recipient from a source other than the disclosing party that has the right to disclose such information to the recipient.

The provisions of any non-disclosure agreement (or written agreement of similar effect) entered by the parties shall supersede any conflicting provisions in this Section 26.