

STANDARD TERMS AND CONDITIONS

Last update: 6/1/2007

1. **Controlling Conditions.** Buyer's order is Seller's (pinta acoustic, inc.) offer to Buyer and is not an acceptance by Seller of any offer of Buyer or of any terms and conditions of Buyer. Seller's offer is conditioned upon the Buyer's acceptance of the terms and conditions set forth herein, and shall constitute the complete agreement between the parties. Any provisions or conditions of buyer's order forms, which are in any way in conflict or in addition to these terms and conditions shall not be binding on Seller and shall not be applicable. As used herein, such words as "product," "material," "item," "goods," "equipment" and similar terms, including the plural thereof, are used interchangeably and shall have the same meaning unless the contrary is clearly evident.
2. **Prices.** Prices are subject to change without notice.
3. **Taxes.** Prices do not include federal, state or local taxes, now or hereafter enacted, applicable to the goods sold, which tax or taxes will be added by the Seller to the sales price where the Seller has the legal obligation to collect the same, and will be paid by buyer unless buyer provides the Seller with a legally enforceable tax exemption certificate.
4. **Terms and Methods of Payment.** Unless otherwise provided, buyer shall pay cash in advance of shipment. The Seller may extend payment terms and credit as a matter of convenience to the Buyer. However, the Seller reserves the right to limit the amount of credit or refuse credit based upon credit information and any estimated risk it determines. If the Seller extends credit to buyer, terms of payment shall be net 30 days. The amount of credit may be changed or credit withdrawn by the Seller at anytime. Anything to the contrary notwithstanding, the Seller shall be under no obligation to make any shipment when buyer is in default under this agreement or any payments are due from date when the Seller is prepared to make such shipments. Should Buyer default in any of the terms and conditions as set forth herein, the Seller shall be entitled to payment of interest by buyer on any debt that is over thirty days old at the rate of 18 percent per annum or the maximum interest rate allowed by law and to reasonable collection costs and attorney's fees.
5. **Delivery.** The goods shall be delivered F.O.B. the Seller's plant, Minneapolis, Minnesota, or other location designated by Seller, and liability for loss and damage in transit or thereafter shall pass to buyer upon the Seller's delivery of goods to a common carrier for shipment to buyer. Shipping and insurance charges, any duty and all taxes related to buyer's order shall be paid by buyer. Claims for damages in transit must be asserted against the carrier. Within ten (10) days after receipt of shipment, buyer must report any shortage or damage not due to the carrier, otherwise claims for such storage or damage will be deemed waived. Shipping dates are contingent upon prompt receipt by the Seller of all applicable customer specifications, customer furnished material, and availability of raw materials. All stipulated delivery or shipment dates are estimated only. The Seller reserves the right to make delivery in installments and the contract shall be severable as to each such installment. The Seller may in whole or in part manufacture, assemble or otherwise fulfill the order of goods at any of Seller's plants. Delay in delivery or other default in any installment shall not relieve buyer of its obligation to accept and pay for remaining deliveries. All claims for delay in delivery shall be deemed waived unless presented to the Seller, in writing, within thirty (30) days after delivery of each shipment.
6. **Fulfillment.** Delivery of ten percent (10%) more or less than the quantity specified shall constitute fulfillment of Buyer's order and Buyer shall take and pay for any such excess including any raw materials purchased by the Seller for the manufacture of Buyer's order.

7. **Limited Liability.** In no event shall the Seller, under any circumstances, be liable for Buyer's increased costs, loss of profits or good will or any special, indirect, incidental, or consequential damages.
8. **Contingencies.** Seller shall not be responsible for any failure to perform due to causes beyond its control. These causes shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war or rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor shortages, transportation embargoes, or failure or delays in transportation, and inability to secure raw materials or failures of machinery for the manufacture of its products, power shortages, acts of God, acts of the federal government or any agency thereof, acts of any state or local government or agency thereof, and judicial action, all whether foreseen or unforeseen.
9. **Assistance.** If upon Buyer's request, Seller assists Buyer in submitting suggestions concerning design, construction or composition of products, Seller shall not be liable for or on account of any such suggestions adopted by Buyer in whole or in part.
10. **Security Interest.** Title to and ownership of the products, wherever located, as described on the reverse side shall be and remain at all times with Seller and its assigns until the purchase price and any notes given to evidence same have been paid in full. The products shall at all times remain personal property and shall be located and remain at buyer's address set forth on the front of this form unless Seller consents, in writing, to their removal. Unless the entire purchase price is paid on delivery of the products, Buyer agrees at pinta's request to execute, acknowledge and record appropriate financing statements to perfect a security interest in the products in favor of Seller.
11. **Limitation of warranty and claims.** Recommendations for the use of this product are based upon tests we believe to be reliable. Seller warrants to the original purchaser that the goods sold hereunder shall be free from defects in workmanship and materials under normal use and service for a period of one (1) year from the date of shipment. Manufacturer and seller are not responsible for results where the product is used improperly, where it is used for any application it is not intended for, used under unacceptable environmental conditions and mishandled or stored under improperly. This warranty is expressly in lieu of all other warranties, express or implied, whether statutory or otherwise including any implied warranty of merchantability or fitness for a particular purpose. Under no circumstances will the manufacturer or seller be liable for damages to anyone in excess of the purchase price of this product.

In no event shall Seller be liable to Buyer for any indirect, incidental, special, or consequential damages of any kind. Buyer indemnifies Seller, its successors and assigns, from and against any and all loses, damages, and expenses, including attorney's fees, which Seller may sustain or incur as a result of any claim or negligence, breach of warranty, or strict liability in tort in connection with the use of the goods furnished hereunder, except such as may be wholly caused by negligence of Seller.
12. **Patents.** When Seller manufactures or modifies any product in accordance with Buyer's specifications or design, Buyer at its expense will defend any suit against Seller for infringement of any patent resulting from use of Buyer's specifications or design and Buyer will satisfy any final award of damages against Seller for such infringement. As to products wholly designed and manufactured by Seller, Seller, at its own expense, will defend any suit against Buyer for infringement of patents by any such product purchased from Seller when used or sold for its normal purpose and in such suit will satisfy any final award to damages for such infringement, but Seller assumes no liability, consequential or otherwise, for infringement of patent claims covering any other product, or any completed equipment, or any assembly, combination, method or process, in which, or in the manufacture or testing of which, any such product may be used (notwithstanding that such product may have been

designed only for use in, or may be useful in, such other patented product or such patented equipment, assembly, combination, method or process or in the manufacturing or testing thereof, and that such product may have been purchased by buyer and sold by the Seller for such use). This guarantee by the Seller is upon the condition that Buyer shall give Seller a prompt notice in writing of such suit for infringement, full opportunity to conduct the defense thereof and full assistance and cooperation in said defense. No cost or expense shall be incurred on account of Seller without its written consent.

13. **Performance Specifications.** Any modifications or changes by Buyer in the design, specifications or intended use of products may well affect product performance. The physical placement of product and the surrounding conditions, among other factors, will affect product performance. Sizes, weights, dimensions and other details stated in publications, advertisements or otherwise (except to the extent they are expressly stated on the face of this form) are subject to change and are not to be treated as contractual or as representations binding upon Seller. Dimensions, appearance, design and similar specifications stated on the face side of this form may be modified by Seller where necessary due to unavailability of materials or due to Seller's perception of technological advances.
14. **Changes.** Buyer's order shall not be canceled, changed, or reduced in any amount, nor any deliveries suspended by buyer without Seller's prior written consent.
15. **Nonwaiver of Default.** Each shipment made under any order shall be treated as a separate transaction, but in the event of any default by Buyer, Seller may decline to make further shipments without in any way affecting its right under such order. If, despite any default by Buyer, Seller elects to continue to make shipments, its actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedy for such default.
16. **Law.** The validity, construction and performance of these terms and conditions or any sale made hereunder shall be governed by the laws of the State of Minnesota. Buyer agrees that venue of any litigation shall be in the State of Minnesota, County of Hennepin.
17. **Modifications of Standard Terms and Conditions.** No addition to or modification of any of the provisions upon the face or reverse if this form shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller.
18. **Time for Bringing Action.** Any lawsuit brought on behalf of Buyer for breach of this contract must be commenced within one (1) year after the cause of action has accrued.
19. **Tooling.** Any tooling purchased by the Buyer but stored on any premises of the Seller for the purpose of producing products shall be removed by the Buyer upon completion of the order(s). If any tooling remains inactive and/or is not removed within twenty four (24) months, Buyer shall cause the Seller to have the right to dispose of the tooling and charge the Buyer for the cost of such disposal.