

Terms and Conditions

The following terms and conditions, together with the Quotation, delivery, and payment terms set forth above, shall constitute an agreement (this "Agreement") between Vertilon Corporation ("Vertilon") and Customer (identified at the beginning of this Quotation) ("Customer"). Vertilon agrees to provide to Customer, and by referencing this Quotation Number in any purchase order or contract, Customer agrees to accept and pay for, the quoted items under the terms and conditions stated in this Agreement.

The lead time is an estimate and set after receipt of order (ARO).

"Deliverables" are any hardware, software, firmware, and/or services to be provided by or leased from Vertilon under this Agreement, as specified above. Any modifications or customizations made by Vertilon to its products are to be considered Deliverables under this Agreement.

Customer agrees to pay for Deliverables under terms specified on first page of Quotation and using US dollars. Prepayment is the normal method for international orders which must be fully made in US currency, by credit card, wire transfer, or letter of credit issued by a US bank. There is a 2.5% surcharge on international orders paid for by credit card. For letter of credit there is a \$300 minimum handling charge. For international payments by wire transfer, a fee of \$25 is charged.

Prices quoted are Ex Works (EXW) from Vertilon's Westford, Massachusetts facility. Customer shall be responsible for shipping charges, duties, customs fees, and VAT taxes. Customer must authorize shipping method and type and amount of shipping insurance, if desired, at time of order.

Purchase orders for Deliverables that are specified as "NR Item" shall be Non-Returnable (NR). Purchase orders for Deliverables that are specified as "NCNR Item" shall be Non-Cancelable and Non-Returnable (NCNR). Changes to existing orders must be submitted in writing and may be subject to price and delivery adjustments.

Customer agrees to assume and be responsible for, and to indemnify Vertilon from and against, any and all applicable U.S. (Federal, State and local) and foreign sales, use, and other taxes (excluding taxes based upon Vertilon's net income), duties, and other governmental charges of any nature related to Vertilon's performance of its obligations under this Agreement and/or the sale or provision of Deliverables hereunder. If applicable, Customer will furnish Vertilon with an exempt purchase or resale certificate.

The products listed under this quotation are Vertilon standard, Commercial Items as defined in U.S. government FAR 2.101. Customer has no right or license to any of the designs, technical data, or design data of, from, or pertaining to any Deliverables.

Customer has no right or license to reproduce, copy, or reverse engineer any Deliverables or any portion of any Deliverables. Nothing in this Agreement shall be deemed to transfer to Customer any right or license of any kind in any of Vertilon's intellectual property and technical data.

Vertilon warrants to Customer that the products it sells will be free from defects in materials and workmanship for the periods set forth in the applicable warranty statement, a copy of which may be obtained from Vertilon. If any such product proves defective during the warranty period, Vertilon will repair or replace the defective product as specified in the applicable statement. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. VERTILON AND ITS VENDORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, AND NON-INFRINGEMENT. VERTILON'S RESPONSIBILITY TO REPAIR OR REPLACE A DEFECTIVE PRODUCT IS THE SOLE AND EXCLUSIVE REMEDY PROVIDED TO CUSTOMER FOR BREACH OF THIS WARRANTY.**

VERTILON SHALL NOT BE LIABLE TO CUSTOMER (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM CUSTOMER) FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF BUSINESS, OR LOSS OF DATA) IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OF THE DELIVERABLES, WHETHER IN CONTRACT OR IN TORT AND REGARDLESS OF WHETHER VERTILON WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

Customer will indemnify, defend, and otherwise hold harmless Vertilon, its successors and assigns, and its and their respective officers, directors, employees, consultants, and shareholders, from and against any claims, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' and professional fees) suffered or incurred by any such indemnitee that (a) arises out of or relating to the use, manufacture, marketing, sale, or distribution of any Deliverables or any derivatives of any Deliverables that are developed by or for Customer (whether by manufacturing a product based on a Deliverable, by combining a Deliverable with other systems or components, or otherwise); or (b) results from Customer's failure to comply with applicable laws in the performance of this Agreement. Vertilon will (i) provide Customer with prompt written notice of the claim; (ii) permit Customer to control the defense, settlement, adjustment, or compromise of such claim; and (iii) upon Customer's request, provide Customer with reasonable assistance with the defense of such claim at Customer's expense.

This Agreement is subject to, and Customer shall comply with, all applicable U.S. export laws, rules, and regulations. Customer shall be responsible for obtaining all export licenses and approvals as may be required by the U.S. Government.

Customer and Vertilon agree that the Federal and State courts of the Commonwealth of Massachusetts shall have jurisdiction over the enforcement of this Agreement, and Customer and Vertilon specifically consent to and agree that they are subject to the jurisdiction of such courts.

No supplement, modification, or amendment of any term, provision, or condition of this Agreement shall be binding or enforceable unless evidenced in writing by both Vertilon and Customer.

A waiver by Vertilon of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed.

If any provision of this Agreement is declared invalid by any tribunal, then such provision shall be deemed automatically adjusted to the minimum extent necessary to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed to be a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be adjusted, such provision shall be deemed deleted from this Agreement as though such provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in effect.

All written notices or other communications to a party under this Agreement shall be deemed properly delivered to such party if (a) delivered personally, or (b) mailed by registered or certified mail, postage prepaid, return receipt requested, to such party's address set forth at the beginning of this Quotation & Agreement (or to such other address as such party may designate in writing to the other party).

In the event of any conflict between any of the terms and conditions of this Agreement and any of the terms and conditions in any Customer order or other documentation submitted by Customer, the terms and conditions of this Agreement shall take precedence and shall be controlling.

If litigation is commenced by either party to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees, both at trial and on appeal.