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Quote 4420.0

Client Information

Name: Fritz Sonnichsen
Company: Woods Hole Oceanographic Institution
Address: 266 Woods Hole Road,
Woods Hole, MA 02536, United States

Quote Information

Date Created: Jul 6, 2004
Expiration date: Aug 6, 2004
Account Manager: Brian VanOrsdel
Email: brian.vanorsdel@bookham.com

Introduction

As requested, I am pleased to supply the quotation below on behalf of Bookham Technology. 1 pc. currently in inventory.

Quantity	Description	Estimated Delivery	Unit Price (USD)
1 to 9	MGMFP-1AOC28 13dBm, 23dB Gain C Band Single Pump Preamp w/SC/PC connector	2 wks. ARO	4,000.00

Comments

All orders shipped Exworks, Paignton, Devon, U.K. Please provide courier name and account number for shipping charges.
Orders should be faxed to Lynn Bearl at 763-295-0836.

Bookham Technology reserves the right to reissue this quotation to correct errors & omissions.

All Prices are quoted in USD. Payment terms are within 30 days of invoice.

Terms and Conditions for Sale

1. DEFINITIONS

In these Standard Terms and Conditions of Sale (ÖTerms) the following definitions apply: -

ÖAcknowledgment Ö means the Seller's standard sales order acknowledgment document.

ÖCustomer means the person, firm, body or company to whom a quotation is made and/or to whom an Acknowledgment is sent by Seller.

ÖContract means the binding contract between the Customer and the Seller for the sale and purchase of the Products.

ÖProduct means a product that the Seller offers to sell, and/or sells (or agrees to sell) pursuant to a Contract.

ÖSeller means either Bookham Technology plc or Bookham (Switzerland) AG as indicated on a quotation and/or an Acknowledgment.

References to Clauses mean clauses of these Terms, Clause headings are for convenience only.

2. FORMATION OF CONTRACT

2.1 Any written quotation of the Seller is (except as otherwise stated therein): -

a) an offer to sell Products in accordance with these Terms; and

b) valid for thirty days from the date thereof (subject to any written extension or earlier withdrawal by Seller).

2.2 Any published price list of Seller does not represent an offer open for acceptance.

2.3 Seller shall sell the Products to the Customer in accordance with any Customer order: -

a) that constitutes an unqualified acceptance of Seller's written quotation; or b) that Seller, at its sole discretion accepts (either in whole or in part).

2.4 Any Customer order conforming to Clause 2.3 will be accepted by means of the Acknowledgment. Such acceptance shall form a Contract governed solely by these Terms.

2.5 These Terms shall override all other terms and/or conditions or warranties (if any) imprinted on or referred to in an order, form or other document issued by the Customer (none of which shall apply), and no alteration of the Terms will bind the Seller unless expressly accepted in writing by the Seller.

2.6 Contracts shall be non-cancellable in whole or in part. Any indulgence or waiver that Seller may make shall be at Seller's discretion, on a case-by-case basis and subject to Clause 15.8.

3. DELIVERY & PASSING OF RISK

3.1 Unless otherwise agreed in the Acknowledgment, delivery of Products shall be ex-works (EXW) (the Seller's applicable shipment facility as stated in the Acknowledgment) (Incoterms 2000).

3.2 The Seller will use its reasonable endeavours to meet any time or date for delivery stated in the Acknowledgment.

3.3 Delivery may be made in one or more separate consignments.

3.4 The Customer shall be deemed to have accepted the Products within fourteen calendar days of delivery.

3.5 Risk shall pass to the Customer upon delivery.

3.6 If due delivery is delayed for reasons attributable to the Customer or its agents, storage and any other reasonable costs will be payable by the Customer on demand by Seller and notwithstanding Clause 3.5 the Products shall be at the Customer's risk from the commencement of the delay. Seller reserves the right to invoice the Customer for the Products and to commence the warranty period given in Clause 8 with effect from the original due delivery date.

4. PRICE

4.1 The price shall be the Seller's quoted price, or, in the event of any conflict, the price in the Acknowledgment.

4.2 The price includes packaging in accordance with the Seller's normal practice.

4.3 The price excludes (as applicable) any and all: a) Value-Added or other similar sales or other taxes levied upon Products supplied by Seller, and b) additional costs and charges incurred by Seller for shipping, insurance and special handling from applicable Seller's facility; all of which shall be charged in addition to the price.

4.4 Customer agrees to pay all such amounts due and payable pursuant to Clause 4.3, or supply exemption documentation. Also, if applicable, Customer shall be responsible for any personal property taxes arising in relation to each item of the Products from the date of shipment by Seller.

4.5 Reference in these Terms to Ötax or Ötaxes include excise, duties, levies and all such similar forms of taxes.

5. PRICE VARIATION

The Seller reserves the right to vary the price of the Products to be supplied pursuant to the Contract in proportion to any verifiable change of costs to the Seller between the date of the Acknowledgment and the date of delivery (including but not limited to exchange rate variations, labour costs, material costs, transport costs and taxes) or where the change is due to any act or default of the Customer.

6. PAYMENT

6.1 Unless otherwise stated in the Acknowledgment and subject to Clause 6.2, Customer shall pay amounts due within thirty days of the invoice date in the same currency as stated in the Seller's invoice. Customer shall be liable to pay interest on any late payments at the rate of 18% per annum (1.5% per month). Additionally, if any payment is more than fifteen days past due, Seller shall be entitled to suspend performance of any or all of its obligations under the Contract until all such payments are made.

6.2 The Seller reserves the right to require payment by an irrevocable letter of credit confirmed by a London clearing bank (or similar high-rated world bank) to be established in favour of the Seller and to have an initial validity period not less than the delivery period in the Acknowledgment plus one calendar month. The letter of credit shall permit part shipments and provide for the release of one hundred percent (100%) of the Contract value of the Products comprising each shipment. The Seller shall be under no liability to deliver any Products until a letter of credit has been opened in accordance with this Clause 6.2.

6.3 Legal and beneficial title in the Products shall remain in the Seller until payment in full has been received by the Seller for all sums due to the Seller by the Customer under all contracts between them. ÖUntil such time the Customer shall hold the Products as the Seller's fiduciary agent and bailee and the Seller may require return of the Products. ÖFor the purpose of recovery of the Products the Customer grants the Seller an irrevocable licence to enter on any premises where the Products are situated (or are reasonably thought to be situated) to repossess them and the Customer agrees to pay any costs of repossession. ÖThe Customer will store the Products separately and in such a way to enable them to be clearly identified as the Seller's property. Notwithstanding the above risk in the Products shall pass as in clause 3.5.

6.4 The Customer shall not be entitled to exercise any right of set-off or counter claim against Seller's invoices.

For the purpose of recovery of the Products the Customer grants the Seller an irrevocable licence to enter on any premises where the Products are situated (or are reasonably thought to be situated) to repossess them and the Customer agrees to pay any costs of repossession. The Customer will store the Products separately and in such a way to enable them to be clearly identified as the Seller's property. Notwithstanding the above risk in the Products shall pass as in clause 3.5.

6.4 The Customer shall not be entitled to exercise any right of set-off or counter claim against Seller's invoices.

7. SPECIFICATION & CHANGES

7.1 All Products manufactured by the Seller will conform in all material respects to the specifications referred to in the Acknowledgement. No other specification, descriptive material, written or oral representation, correspondence or statement, shall form part of or be incorporated by reference into the Contract.

7.2 Seller may make alterations to any Product as necessary to ensure compliance with specifications, changed safety or environmental standards or governmental regulations, to make a Product non-infringing with respect to any patent, copyright or other proprietary interest, or to otherwise improve a Product. Seller will use reasonable endeavours to promptly notify Customer of any such material changes.

8. WARRANTY OF PRODUCTS.

8.1 Bookham warrants that the Products, but not related services, i) are free from defects in materials and workmanship and ii) conform to Clause 7.1.

8.2 The warranty period for Products shall be twelve months from the date of shipment unless otherwise stated on the Acknowledgment.

8.3 If any Product is found by Seller not to function as warranted during the warranty period, Seller will determine at its sole option to either i) make it do so, or ii) replace it with equivalent conforming Product.

8.4 If Seller determines, at its sole option, that repair or replacement, cannot be made using commercially reasonable efforts, Seller will refund to Customer the price paid for the Product.

8.5 Any replacement Product will conform to the applicable specification and will be equivalent to the original exchanged Product in all material respects. Seller shall own the replaced Product.

8.6 The warranty period for the replacement Product shall be the greater of ninety days from the date of such replacement or the remaining replaced Product warranty period.

8.7 Seller shall be responsible for loss of, or damage to, Customer returned Product while it is in Seller's possession during warranty service until re-delivery to Customer or until delivery of replacement or until repayment pursuant to Clause 8.4 (as applicable).

8.8 No warranty is provided for i) supply items normally consumed during operation of the Products; ii) failures caused by non-Seller products; iii) failures caused by a Product's inability to operate in conjunction with other Customer hardware or software; iv) performance failures resulting from services not performed by Seller or (v) development, pre-production or any form of prototype and non-qualified Product whatsoever.

8.9 Warranty will be voided by misuse, accident, damage or modification, failure to maintain proper physical or storage/operating environment or improper Customer maintenance not approved by Seller in writing.

8.10 The terms of this Clause 8 set out the Seller's entire liability to remedy any defect or default in the Products. Save as provided in this Clause 8 all warranties, representations, terms or conditions, express or implied, including but not limited to the implied warranties or conditions of satisfactory quality and fitness for a particular purpose are hereby expressly excluded to the fullest extent permitted by law.

9. WARRANTY CLAIM PROCEDURE

9.1 Seller will provide warranty services to Customer consistent with Seller's current standard practices and response times. Where applicable, before Seller provides warranty services, Customer agrees to follow the problem determination, problem analysis, and warranty services request procedures that Seller provides.

9.2 When returning Product to Seller for warranty service, Customer agrees to ship it prepaid and suitably packaged to a location Seller designates.

9.3 If not found by Seller to be in breach of warranty the Products will be returned to the Customer at Customer's expense and the Seller may charge an evaluation and test fee not exceeding fifteen percent of the price of the Products so affected. If the Products are found to be in breach of warranty, any replacements or repaired Products will be returned to the Customer at the Seller's expense.

9.4 Post warranty services may be available at Seller's then-current prices.

10. INTELLECTUAL PROPERTY

10.1 All intellectual property and other proprietary rights relating to Products (including, but not limited to, patents, copyright and trademarks) and all technical, business and similar information of Seller or which is created by the Seller in course of the Contract shall be, and shall remain, the Seller's property.

10.2 Customer agrees not to remove, alter, obscure or deface any marks, names, notices or numbers affixed to the Products without the Seller's written consent.

10.3 If a third party claims that Products provided to Customer under the Contract infringe that party's patent or copyright, Seller will defend Customer against that claim at Seller's expense and pay all costs and damages that a court finally awards or are agreed in settlement, provided that Customer a) promptly notifies Seller in writing of the claim and b) allows Seller to control, and cooperates with Seller in, the defence and any related settlement negotiations.

10.4 If such a claim is made or appears likely to be made, Seller agrees to secure the right for Customer to continue to use the Product, or to modify it, or to replace it with one that is equivalent. If Seller determines that none of these alternatives is reasonably available, Customer agrees to return the Product to Seller on Seller's written request. Seller will then give Customer a credit equal to the depreciated value for the Product.

10.5 Any such claims against the Customer or liability for infringement arising from use of the Product following a request for return by Seller are the sole responsibility of Customer. This represents Seller's entire obligation to Customer regarding any claim of infringement.

10.6 Seller has no obligation regarding any claim based on any of the following: a) anything Customer provides which is incorporated into the Product; b) functionality provided by Seller at the instruction of Customer; c) Customer's modification of Product; or d) the combination, operation, or use of Product with other products not provided by Seller.

11. LIMITATION OF LIABILITY

11.1 In no event shall Seller or its agents or suppliers be liable to Customer for more than the amount of any actual direct damages relating to any one act or event (or connected series of events) up to the greater of £100,000 Sterling (or equivalent in local currency) or the total price of the Products in the Contract that are the subject of the claim, regardless of the cause and whether arising in contract, tort (including negligence) or otherwise.

11.2 This limitation will not apply to claims for damages for bodily injury (including death) and damage to real property and tangible personal property caused by the negligence of Seller or in the case of fraudulent misrepresentation by Seller.

11.3 In no event shall Seller or its agents or suppliers be liable for any of the following: a) damages based on any third party claim except as expressly provided in Clauses 10 and 11; b) loss of, or damage to, Customer's records, files or data; or c) indirect, special, incidental, punitive, or consequential damages (including lost profits, revenues or savings, or other forms of economic loss), even if Seller is informed of their possibility.

12. TERMINATION

The Seller may terminate the Contract forthwith if the Customer breaches any of the Terms or becomes insolvent or enters any arrangement with creditors or goes or is

Termination shall not prejudice the Seller's right to payment for Products delivered prior to termination but not paid for by the Customer.

13. CONFIDENTIALITY

The following confidentiality provisions shall apply to the Contract.

- a) For purposes of the Terms confidential information (Information) means all business, technical, marketing and financial information and data which, at the time of disclosure by the disclosing party (Discloser), is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential.
- b) The party receiving Information (Recipient) will use the same care and discretion, but not less than reasonable care, to avoid disclosure, publication or dissemination of Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate. The Recipient may disclose Information only to i) its employees and employees of its subsidiaries who have a need to know for purposes of carrying out the Contract; and ii) any other party with the Discloser's prior written consent. Before disclosure to any of the above parties, the Recipient will have a written agreement with such party sufficient to require that party to treat Information in accordance with this Clause 13.
- c) The Recipient may disclose Information to the extent required by law. However, the Recipient must give the Discloser prompt notice and make a reasonable effort to obtain a protective order.
- d) No obligation of confidentiality applies to any Information that the Recipient i) already possesses without obligation of confidentiality; ii) develops independently; or iii) rightfully receives without obligations of confidentiality from a third party. No obligation of confidentiality applies to any Information that is, or becomes, publicly available without breach of this obligation of confidentiality.
- e) The release of any advertising or other publicity relating to the Contract requires the prior approval of both parties.

14. ITEMS SUPPLIED BY CUSTOMER

Any items supplied by Customer for the purposes of the Contract (Infeed Item) shall be of suitable quality, in accordance with the relevant specification and shall be provided free of charge in sufficient quantities and at the times required by Seller. Customer shall indemnify Seller from and against all actions, demands, claims, proceedings, losses, or costs resulting from a defective Infeed Item, or from any liability for infringement of a third party's intellectual property rights arising from the supply or subsequent use or sale of Infeed Items.

15. GENERAL PROVISIONS

- 15.1 Customer agrees not to assign, or otherwise transfer the Contract or Customer's rights under it, or delegate Customer's obligations, without Seller's prior written consent, and any attempt to do so is void.
- 15.2 Customer represents and warrants that it is buying Products for its own internal use and/or for incorporation in other Customer hardware or software to be sold to third parties as an aggregate product or system. Customer agrees that it shall not resell Products to third parties in the same or similar form as sold by Seller to Customer without receiving prior written consent from Seller.
- 15.3 Seller and Customer agree to comply with all applicable laws including, without limitation, all applicable export and import laws and regulations. Customer shall not export any Products or technical data received from Seller pursuant to the Contract except in accordance with applicable laws and regulations.
- 15.4 Neither party shall have any liability under the Contract for any matter beyond its reasonable control including but not limited to act of God, fire, floods, war, terrorism and civil disturbances or riot, acts of Government, currency restrictions, labour disputes, strikes, difficulty in obtaining materials, failure of carrier or sub-contractor or inability to obtain any necessary import or export licence or other consent or permit required of any relevant authority.
- 15.5 Except for non-payment, neither Customer nor Seller will bring a legal action under the Contract more than two years after the cause of action arose.
- 15.6 In the event that any provision of the Contract including these Terms or portions thereof are held to be invalid or unenforceable, the remainder will remain in full force and effect.
- 15.7 The Contract including these Terms forms the complete and exclusive agreement between Customer and Seller and replaces any prior oral or written proposals, correspondence or communications regarding the subject matter hereof.
- 15.8 No forbearance, delay or indulgence by either party in enforcing the provisions of these Terms shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach.
- 15.9 Any changes to these Terms and/or to the Contract must be made by mutual agreement in writing.
- 15.10 The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.
- 15.11 These Terms and the Contract shall be governed by and construed in accordance with the laws of England and both parties submit to the non-exclusive jurisdiction of the English courts.