



“Take a Closer Look”

PROPOSAL/QUOTATION

Inquirer Name and Address: Brett Hobson MBARI 7700 Sandholdt Road Moss Landing, CA 95039 (831) 775-1707 hobson@mbari.org	Date:	29 October 2010
	Date of Inquiry:	29 October 2010
	Inquiry Reference:	E-mail from Chris Roper.
Proposal Number: QMI101029MBARI (881A)	Sales Contact:	Chris Roper 805-798-0277
	Order Entry:	Fax: (805) 484-9012 or e-mail: customer.support@symphotic.com

We are pleased to submit the following quotation from our price list, pricing in U.S. Dollars. See Notes below:

Item	Catalog Number	Description	Qty	Price (USD)	Total (USD)
1	40135SS10	Imaging sonar 881 A , 1000 m depth rating. Frequencies: 310 kHz, 675 kHz, or 1 MHz (default settings). 15 x 15 x 13, 15 lbs	1	12,500.00	\$12,500.00
		Sales Tax (8.255)			1,031.25
		Shipping (estimate):			75.00
		TOTAL, (shipping included)			\$13,606.25

Shipping charges included. We generally ship by Fedex, but will ship by freight upon request. You may also provide your shipper's account information for shipping on your account.

Payment terms: Net 30 days

Delivery estimate: 2 weeks

Note: The product in this proposal is produced by Imagenex.

Product of Canada.

Jack Roberts
Symphotic TII Corporation

Comments:

Our Federal Tax ID (EIN) number is 05-0522657

Thank you for your interest in Symphotic TII Corporation.

Important Notes:

Symphotic TII Corporation

The following warranty information is provided by Imagenex. Items not supplied by Imagenex are covered by their manufacturer's warranties.



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Imagenex Technology Corporation warrants its products for a period of one year from shipment date against defects in materials and workmanship. Imagenex Technology Corp. will, at its option, repair or replace products which prove to be defective, within the warranty period.

Defective products must be returned to the factory, or an authorized repair depot, at the customer's expense. Imagenex Technology Corp. will pay return shipping charges if the repair or replacement is covered by the warranty.

No other warranty is expressed or implied.

Symphotic TII Corporation

TERMS AND CONDITIONS OF SALE

1. **GENERAL.** Symphotic TII Corporation ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any form issued by Buyer shall not operate to vary any of the terms and conditions set forth herein unless expressly agreed to by Seller in writing. If Buyer objects to any term or condition set forth herein, this objection must be in writing and received by Seller at the address stated on the opposite side of this document prior to Seller's delivery of any of the Products. Seller's failure to object to terms contained in any communication from Buyer will not be a waiver of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

3. **TAXES AND OTHER CHARGES.** Prices for the Products are exclusive of all excise, sales, use, transfer and other taxes and duties imposed by any federal, state, municipal or other governmental authority with respect to the sale, purchase, manufacture, delivery, storage, processing, use, consumption or transportation of any Products covered hereby, all of which taxes and duties must be paid by Buyer.

4. **TERMS OF PAYMENT.** Seller may invoice Buyer on shipment for the price and all other charges payable by Buyer with respect to such shipment. All payments shall be made by Buyer in accordance with the terms on the face hereof. If the Products are delivered in installments, Buyer will pay for each installment in accordance with the payment terms specified above. Delays in delivery shall not extend terms of payment. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, FOB (U.S. common trade terms), FCA (Incoterms 1990), Seller's facility in Camarillo, California. Unless otherwise mutually agreed to by the parties, Seller will select the carrier for shipment of the Products, but in no event will Seller be deemed to assume any liability in connection with such shipment nor will the carrier be deemed to be the agent of Seller. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. The Products will be insured in transit at the expense of Buyer. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price thereof. Credit will not be allowed for Products returned without the prior written consent of Seller.

6. **TITLE AND RISK OF LOSS.** Subject to the provisions of Section 7 below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be. Any claims for damage to, or loss or misdelivery of, the Products will be filed directly with the carrier by Buyer.

7. **SECURITY INTEREST.** Seller reserves and Buyer grants to Seller a security interest in all Products sold and all proceeds thereof to secure the full payment and performance by Buyer of its obligations and liabilities to Seller. Buyer acknowledges and agrees that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may request in order to evidence or perfect such security interest.

8. **WARRANTY.** Seller warrants that the Products will operate substantially in conformance with Seller's published specifications, when subjected to normal, proper and intended usage by properly trained personnel, for a period of one (1) year from the date of shipment to Buyer (the "Warranty Period"). Seller agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any defect and further provided that all costs of returning the defective Products

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to Seller are pre-paid by Buyer, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said specifications. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the provisions of Section 5 above. Lamps, fuses, bulbs and other expendable items are expressly excluded from the warranty under this Section 8. **SELLER'S SOLE LIABILITY WITH RESPECT TO EQUIPMENT, MATERIALS, PARTS OR SOFTWARE FURNISHED TO SELLER BY THIRD PARTY SUPPLIERS SHALL BE LIMITED TO THE ASSIGNMENT BY SELLER TO BUYER OF ANY SUCH THIRD PARTY SUPPLIER'S WARRANTY, TO THE EXTENT THE SAME IS ASSIGNABLE.**¹ In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by the warranty provided in this Section 8, Buyer shall pay Seller thereof at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

9. INDEMNIFICATION.

9.1 **By Seller.** If notified promptly in writing of any action (and all prior related claims) brought against Buyer based on a claim that a Product infringes any valid United States patent, copyright or trade secret, Seller shall defend such action at Seller's expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Seller shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. Buyer shall cooperate fully with Seller in the defense, settlement or compromise of any such action. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or (iv) modifications of the Product by anyone other than Seller without Seller's prior written approval. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE PRODUCTS OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES.

9.2 **By Buyer.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval.

10. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains ownership of and title to all software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. For purposes of Section 117 of the Copyright Act of 1976, as amended, and for all other purposes, Seller will be considered the owner of the software products and related documentation provided hereunder and any copies thereof, and of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Buyer agrees not to sell, transfer, license, loan or otherwise make available to third parties the software products and related documentation provided hereunder. Buyer may not modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. The source code for the software products supplied hereunder will not be disclosed to Buyer, and Buyer may not disassemble, decompile or reverse engineer the software products supplied hereunder. Buyer agrees to hold in confidence the software products and related documentation supplied hereunder and not to disclose or make available in any form the same, except to Seller's and Buyer's employees and agents. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Seller and Buyer intend and agree that software products owned by third parties and provided hereunder are being sublicensed to Buyer, that such third parties retain ownership of and title to such software products, and that such third parties may directly enforce Buyer's obligations hereunder in order to protect their respective interests in such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

¹ Note: The product(s) in this proposal are produced by Saab Seaye and other third parties and are covered by their warranties.



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11. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER UNDER SECTION 9.1 ABOVE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE THEREFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

12. MISCELLANEOUS. Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. The rights and obligations of the parties hereunder shall be governed by and construed as a sealed instrument in accordance with the laws of the State of California. In the event that any one or more provisions contained herein (other than the provisions obligating Buyer to pay Seller for the Products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The remedies contained herein are cumulative and in addition to any other remedies at law or in equity. Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. In case of a conflict between the terms and conditions on the face of this document and the terms and conditions on this reverse side of this document, the terms and conditions on the face of this document shall control.