

PROPOSAL/QUOTATION

Inquirer Name and Address: Dale Graves Manufacturing Group Leader Monterey Bay Aquarium Research Institute (MBARI) 7700 Sandholdt Road, Moss Landing CA 95039-9644 Phone: 831 775 1913 Fax: 831 775 1615 grda@mbari.org	Date:	10 January 2011
	Date of Inquiry:	9 January 2011
	Inquiry Reference:	E-mail from Chris Roper.
Proposal Number: QMS 110110 MBARI (FalconDR)	Sales Contact:	Chris Roper 805-798-0277
	Order Entry:	Fax: (805) 484-9012 or e-mail: operations@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	60020FS	Falcon DR Remotely Operated Vehicle System. Vehicle unit with five SI-MCT01 thrusters (1000m rated versions)--four vectored horizontals and one vertical. Also includes fiber optic video and data system, cabin junction box, SEAEYE color video camera, tilt system with oil compensated tilt & feedback units, and two camera tracking, dimmable, LED lighting units. Includes automatic heading & depth system, navigational flux-gate compass and integral solid state rate sensor, standard surface control unit with 15" color TFT dual input monitor, surface power supply unit, hand control unit and video Overlay system. Includes two day factory training course for up to 3 students at Seaeeye Marine (exclusive of travel and living expenses), and two sets of paper and CD ROM operators manuals. Ref.: FALCON DR SYS PO7102 SI-DATAEXPORT	1	\$171,343.00	\$171,343.00
2	60006FS	Fiber optic cable for Falcon DR and Falcon with fiber optic upgrade, 14 mm OD (Max length 1,100 meters). Double PE high abrasion resistant jacket, vectran strain member- 525 kg breaking strain, 2 x multi-mode fibers, 4 x power conductors, 1 x discrete conductor for CP reference, 1 x discrete conductor for CP reference. Requires, but does not include, fiber optic termination. REF.: 5823. For Falcon DR and Falcon Standard with FO upgrade. Price per meter. Up to 1100 meters may be specified.	1000	26.00	\$26,000.00
3	60007FS	Umbilical termination, fiber optic includes cable grip, sub-sea and surface terminations.	1	4,537.00	\$4,537.00
4	60021FS	Umbilical winch - electric powered. 1100m Capacity for 14mm diameter umbilical. Includes slipping assembly with mechanical and optical passes, spooling equipment, winch base with lifting eyes. NOTE: WE CAN ALSO SUPPLY LOCALLY MANUFACTURED WINCHES FOR SIGNIFICANT SAVINGS.	1	94,776.00	\$94,776.00
5	60008FS01	10m Deck Lead from Winch to Surface Unit (umbilical cable). Fiber optic.	1	326.00	\$ 326.00
6	60024FS	Falcon running lock latch system NOTE: This option allows simple deployment from on deck, but may be eliminated if not	1	12,474.00	\$12,474.00

		required.			
7	60041FS300	Falcon DR Skid, 1000 meters Note on adding additional equipment to the Falcon DR: Power from the Falcon vehicle is 48VDC. Aux power supplies can be provided for different power requirements. Communications is by RS232 to a fiber optic communications link. We can provide the required adapters and cable whips for your external equipment. Please inquire.	1	2,800.00	\$2,800.00
8	60022FS06	Falcon DR Remote Location Spares Kit, LED lighting. Ref. Falcon DR SSK02-L. Includes: 6 ea. Connector cable terminal plug, 5 way 8A; 1 ea. PCB Falcon aux PSU; 1 ea. PCB Falcon overlay, V2; 1ea. PCB Falcon junction box, V2; 1 ea. Falcon fiber optic ROVJB PCB; 1 ea. Seaeye feedback assembly; 1 ea. Fuse kit for Falcon system; 1 ea. PC104 386 CPU Module with DOC8MB+ Dr-DOS; 6 ea Lamp 28V 75W to fit M10 lamp base; 1ea. Falcon penetrator to FAWL connector; 5 ea. Nylon lockwire 150M monofilament 1.3mm; 1 ea. O-ring kit – Falcon system; 1 ea. Tilt motor comp. assy.; 1 ea. MCT01 Prop; 5 ea. Falcon penetrator backing nut; 2 ea. SI-MCT C spanner; 5 ea. Penetrator adapter washer; 1 ea. Falcon SI-JB04 backing nut spammer, 1 ea. LED Lamp unit; 1 ea. Thruster 48 VOLT RS485 including prop and nozzle; 1 ea. Falcon navigation mode 1000M rated; 1 ea. PCB data acquisition. Subject to change with product revisions	1	24,350.00	\$24,350.00
9	60043FS00	Battery Operated Emergency Strobe. Includes Installation. Ref: ST5K-SPHR, ST5K-SPHR-IF-KIT-3	1	\$2,690.00	\$2,690.00
10	60009FS17	Falcon ROV fitted with skid transit case. Ref.: FLIGHTCASE17	1	1,780.00	\$1,780.00
11	60009FS14	Transit Case, Winch Ref.:FLIGHTCASE WINCH	1	1,470.00	\$1,470.00
12	60009FS16	Spares & Surface equipment Transit Case Ref.: FLIGHTCASE16	1	1,290.00	\$1,290.00
13	60028FS00	Falcon operator's tool kit. Includes basic tools for operation and field maintenance, power strip, and instructions.	1	765.00	\$ 765.00
		TOTAL			\$344,601.00

Shipping charges not included.

Payment terms: Special order: 25% due with order; balance due prior to shipment.

Delivery estimate: 15 weeks (subject to revision as available units are subject to prior sales.) Units may be available sooner, subject to prior sale.

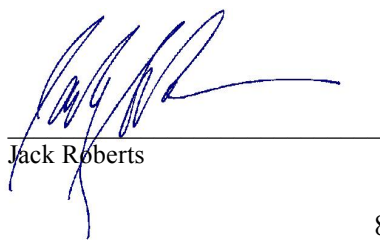
Pricing is based upon current exchange rate at the time of quotation. **PRICING IS NOT GUARANTEED UNTIL TIME OF ORDER.**

Delivery is CIF LAX AIRPORT. Shipped by air freight. Local delivery from airport is not included.

Note: The product in this proposal is produced by Saab Seaeye and is covered by their warranty.

Product of the United Kingdom.

A written confirmation from SeaEye Marine is required before orders may be accepted.



Jack Roberts

880 Calle Plano, Unit K, Camarillo, CA 93012-8573 U.S.A.

Tel: 805-484-6639; Fax: 805-484-9012

www.symphotic.com e-mail: operations@symphotic.com



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Comments:

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

Thank you for your interest in Symphotic TII Corporation.

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The following warranty information is provided by Saab Seaeye. Items not supplied by Saab Seaeye Marine are covered by their manufacturer’s warranties.

SAAB SEAEEYE LIMITED – TERMS AND CONDITIONS OF SALE.

1. Definitions and Interpretation
 - 1.1 In these Conditions:
 - "Buyer" means the person whose order for the Goods is accepted by the Seller;
 - "Conditions" means the standard terms and conditions of sale set out in this document;
 - "Contract" means the contract for the purchase and sale of the Goods including the Seller's quotation and specification;
 - "Goods" means the goods (including any instalment of the goods or any parts for them), which the Seller is to supply in accordance with these Conditions;
 - "Seller" means Saab Seaeye Limited, Seaeye House, Lower Quay Road, Fareham, Hampshire PO16 0RQ, England.
 - 1.2 The headings shall not affect the interpretation of the Conditions.
2. Basis of the sale
 - 2.1 The Seller shall supply and the Buyer shall purchase the Goods in accordance with any written order of the Buyer, which is accepted in writing and signed by a duly authorised representative of the Seller.
 - 2.2 All Contracts shall be governed solely by the Conditions and all other terms and conditions are excluded. No variation to the Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
 - 2.3 No order, which has been accepted by the Seller, may be cancelled by the Buyer except with the written agreement of the Seller.
 - 2.4 All Goods are sold ex works the Seller's premises with packing, freight and insurance costs the responsibility of the Buyer.
 - 2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods or any amendments to the Conditions unless confirmed by an officer of the Seller in writing.
 - 2.6 The Seller reserves the right to make any alterations to the specification of the Goods prior to acceptance of the Buyer's order.
3. Price
 - 3.1 The price of the Goods is as stated in the Seller's quotation and is valid for a period of thirty days from the date of the quotation. All prices are stated in pounds sterling unless otherwise agreed.
 - 3.2 The Seller reserves the right to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) prior to acceptance of the Buyers order.
 - 3.3 The price is exclusive of any applicable value added tax and any other duties, imposts or taxes which the Buyer shall be additionally liable to pay to the Seller at the same time as the part of the price to which they relate.
 - 3.4 The price excludes all costs and expenses other than those referred to in the quotation as being specifically included in the price.
4. Payment Terms
 - 4.1 The Buyer shall pay a deposit of 25 per cent of the total sum as shown in the Seller's quotation at the time of placing an order.
 - 4.2 The Buyer shall pay the balance of the price of the Goods in full in cleared funds before delivery of the Goods unless expressly agreed otherwise in writing by the Seller. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
 - 4.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 4.3.1 cancel the Contract or suspend any deliveries to the Buyer;
 - 4.3.2 appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 4.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2.5 per cent per month or part thereof above Bank of England base rate from time to time, from the date payment was due until it is made in full.
 - 4.4 The Buyer shall not be entitled to set off against the price of the Goods any sums owed by the Supplier to the Buyer.
5. Delivery/Performance
 - 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time during the Seller's business hours on or after the date the Seller notifies the Buyer that the Goods will be ready for collection.
 - 5.2 Delivery shall be deemed to have taken place on the thirtieth day after the date the Seller notifies the Buyer that the Goods will be ready for collection unless the Buyer has already collected the Goods.

880 Calle Plano, Unit K, Camarillo, CA 93012-8573 U.S.A.

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e-mail: operations@symphotic.com

5.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused but will use reasonable endeavours to deliver on the date specified. Time for delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.4 If the Buyer fails to take delivery of the Goods by the deemed delivery date then, without prejudice to any other right or remedy available to the Seller, the Seller may:

5.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

5.4.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6. Acceptance of the Goods

6.1 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises prior to taking delivery of the Goods. The Buyer may only reject any Goods, which are defective or are not in accordance with the Contract at the time of such testing and inspection.

6.2 The Buyer shall be deemed to have accepted the Goods immediately upon taking delivery unless otherwise agreed in writing by both parties. After acceptance the Buyer shall not be entitled to reject Goods, which are not in accordance with the Contract.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time when the Seller notifies the Buyer that the Goods will be available for collection.

7.2 In the event that the Seller expressly agrees in writing to deliver the Goods before receiving payment in full for the Goods and notwithstanding passing of risk in the Goods or any other provisions of these Conditions, the property in the Goods shall not pass to the Buyer until all sums due or owing by the Buyer to the Seller on any account have been paid in full.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are in existence and have not been re sold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of or under the control of the Buyer where the Goods are stored and repossess the Goods.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Seller warrants to the Buyer that the Goods will be free from defects in material and workmanship for a period of 1 calendar year from the date of delivery. The Buyer may not assign the benefit of this warranty.

8.1a Subject to the conditions set out below the Seller warrants to the Buyer that Saab Seaeye:

- Thrusters SM4, SM4M, SM5 units will be free from defects in material and workmanship for a period of 2 calendar years from the date of delivery.
- Thrusters MCT01 units will be free from defects in material and workmanship for a period of 1 calendar year from the date of delivery.
- Warranty on repairs (after warranty date has ended) will be free from defects in material and workmanship for a period of 2 calendar months from the date of delivery.
- Seaeye ROV Systems will be free from defects in material and workmanship for a period of 1 calendar year from the date of delivery.
- The Buyer may not assign the benefit of this warranty.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect which the Seller's investigation and inspection reveals has arisen from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), failure to have the Goods serviced and maintained in accordance with the Seller's instructions (whether oral or written), misuse or alteration or repair of the Goods without the Seller's written approval;

8.2.3 the Seller shall be under no liability in respect of any loss suffered by the Buyer arising because of the operator of the Goods failing to take prompt and adequate action in the event of a failure of the Goods;

8.2.4 the Seller shall be under no liability in respect of any loss suffered by the Buyer due to incompetent installation of the Goods by or on behalf of the Buyer;

8.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect, which the Buyer shall only be entitled to the benefit of any such warranty, or guarantee as is given by the manufacturer to the Seller (if any).

8.3 Subject as expressly provided in these Conditions all warranties; conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to repair the Goods (or the part in question) free of charge or, at the Seller's sole discretion, replace the Goods (or the part in question) or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions.

9. Force Majeure

9.1 The Seller shall have no liability in respect of failure or delay in delivery or performance of its obligations under the Contract due to any causes whatsoever outside the Seller's control including (but without prejudice to the generality of these Conditions) Act of God, explosion, flood, fire, accident, civil commotion, strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party) or the availability of items manufactured or supplied by a third party or their delivery.

10. Termination

- 10.1 The Seller shall be entitled to terminate the Contract (and any other contract between the Seller and the Buyer) without liability to the Buyer forthwith on giving notice to the Buyer at any time if:
- 10.1.1 the Buyer commits a breach of any of these Conditions or any term of the Contract;
- 10.1.2 the Buyer being a company passes a resolution for winding up or a Court makes a winding up order in respect of the Buyer or the Buyer has a receiver, administrative receiver, manager or administrator appointed of all or part of its undertaking or assets;
- 10.1.3 the Buyer, being a partnership, shall be dissolved or, being an individual, shall have a bankruptcy petition presented or shall die;
- 10.1.4 the Buyer shall cease or threaten to cease to carry on its business or be unable to pay its debts or becomes insolvent (within the meaning of the Insolvency Act 1986 or its subsequent amendments) or makes or proposes to make an arrangement or composition with its creditors;
- 10.1.5 the Seller reasonably believes that any of the events mentioned in this Condition is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 Any termination of the Contract (however occasioned) shall not affect the coming into force or the continuation in force of any provision of these Conditions which is expressly or by implication intended to come into or continue in force on or after such termination.

11. General

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office (if a company) or principal place of business (if not a company) from time to time.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 11.4 The Contract shall be governed by the laws of England and the parties submit to the non exclusive jurisdiction of the English Courts.

Lyyn T-38 Warranty Statement (This statement is provided by Lyyn AB):

Exclusive Warranty:

Your LYYN T38 is covered by a limited warranty when you register your LYYN product. This warranty is for a period of one year from the date of purchase from LYYN or an authorized LYYN agent. This warranty applies only to the original purchaser of the LYYN product and is not transferable. LYYN AB warrants that for this period the product will be in good working order. Should our product fail to be in good working order, LYYN will, at its option, repair or replace it at no additional charge, provided that the product has not been subjected to misuse, abuse or non-LYYN authorized alternations, modifications and/or repair. Proof of purchase is required to validate your warranty. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE FORGOING SHALL BE THE SOLE REMEDY OF THE CUSTOMER FOR BREACH OF WARRANTY. This Warranty shall be governed by the laws of the Kingdom of Sweden.

Limitation of Liability.

LYYN IN NOT LIABLE IN CONTRACT, TORT OR OTHERWISE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDEIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, LOST BUSINESS PROFITS, ARISING OUT OF THE USE OF, OR INABILITY TO USE, THIS PRODUCT. THIS INCLUDES DAMAGE TO PROPERTY AND, TO THE EXTENT PERMITTED BY LAW, DAMAGES FOR PERSONAL INJURY.

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



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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 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,

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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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.

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