

## CONDITIONS OF SALE

**ACCEPTANCE:** Seller's acknowledgment of Buyer's order or commencement of any performance pursuant to such order shall constitute Buyer's acceptance of Seller's terms and conditions. The prices set forth in this document and Buyer's order are expressly conditioned upon the exclusive applicability of Seller's terms and conditions. No terms or conditions stated by Buyer shall be binding on Seller unless such terms or conditions are expressly accepted in writing by a duly authorized representative of Seller. Failure of Seller to specifically object to any or all terms and conditions suggested by Buyer shall not be deemed an acceptance of terms and conditions that are in conflict with, inconsistent with or in addition to the terms and conditions in this document. Buyer, upon acknowledgment of Seller's quotation, or upon Seller's commencement of performance pursuant to Buyer's order, shall be deemed to have withdrawn any such terms and conditions that conflict with, are inconsistent with or are in addition to the terms and conditions set forth in this document. THE TERMS AND CONDITIONS IN THIS DOCUMENT SUPERSEDE ALL PRIOR ORAL OR WRITTEN QUOTATIONS, PROPOSALS AND COMMUNICATIONS BETWEEN THE BUYER AND SELLER RELATED TO THE PRODUCTS AND SERVICES IDENTIFIED HEREIN.

**QUANTITIES:** Unless Seller otherwise specifically agrees in writing, Seller reserves the right to over or under ship the quantities shown on the face hereof by 10%.

**PRICES:** Unless Seller's Quotation states otherwise, prices are subject to change without notice at any time until Buyer acknowledges acceptance of Seller's terms and conditions in this document or Seller commences performance hereunder. Prices are FOB Seller's shipping point and, unless Seller otherwise specifically agrees in writing, do not include any costs for transportation, special handling or packaging, additional quality assurance inspections or testing, drawings or data, or any other customer requirements beyond Seller's normal commercial practice. Seller will arrange transformation, prepay shipping charges, and add such charges to Seller's invoice. Unless Seller's Quotations state otherwise, Seller's prices do not include sums necessary to cover any taxes or duties, including but not limited to Federal, State, Municipal excise, sales or use taxes, letter of credit costs and fees and export or import duties upon the production, sale, distribution, or delivery of products or the furnishing of services hereunder. Buyer shall pay when due such taxes, fees, costs, duties and expenses. Seller reserves the right to revise its Quotation at any time, including after commencement or performance hereunder to include any and all taxes, fees, costs or duties that are payable by Buyer hereunder and reserves the right to invoice Buyer such additional amounts. This clause shall survive the acceptance and complete performance of Buyer's order.

**PAYMENT:** All products and services will be invoiced at time of shipment according to the following schedule.

- Unless otherwise specified herein, terms of payment are NET 30 days from the date of shipment of the products or performance of services.
- Late payment charges of 2% per month or the maximum contractual rate permitted by law, whichever is less, will be assessed on all unpaid or past due invoices, plus all applicable inventory, carrying and storage charges.
- Prorata payments are due from Buyer as shipments are made by Seller. If shipments are delayed by Buyer and such delay is acceptable to Seller, Buyer shall be invoiced reasonable storage charges for any such delay. Payments and associated charges shall become due from the date Seller is prepared to make shipment.
- In the event Buyer has overdue invoices, Seller reserves the right to cancel any order without obligation or to delay delivery of goods until such time as delinquent invoices are paid in full with appropriate late payment charges. In the event Seller deems it appropriate to refer Buyer's overdue account to outside parties for collection, Buyer shall pay all Seller costs of collection, including without limitation court costs and reasonable attorney's fees. Notwithstanding anything to the contrary, Seller further reserves the right to deliver shipments on a C.O.D. or cash-in-advance basis.
- All sums owed Seller hereunder shall be due and payable under the terms hereof. Buyer shall not set off said sums against other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Seller, its parent company, or its divisions, subsidiaries or affiliates.
- Nothing herein shall waive any other rights and remedies of Seller permitted by law or equity and all rights and remedies set forth herein shall be considered cumulative to all other available rights and remedies.

**INSOLVENCY:** Seller may cancel the whole or any part of an order in the event of the suspension of Buyer's business, insolvency of Buyer, the institution, by Buyer or others of bankruptcy, reorganization, arrangement of liquidation proceedings involving or affecting Buyer, or any assignment for the benefit of creditors of Buyers or receivership that Buyer places itself in or may be placed in. Such cancellation shall be deemed a cancellation for default of Buyer.

**AUDITS:** Buyer shall not have the right to audit or examine Seller's financial records pertaining to the products sold hereunder.

**DELIVERY:** Unless otherwise specified herein, delivery shall be made within normal lead times applicable to the products ordered. Delivery to a common carrier for shipment to Buyer or to Buyer's designee shall constitute delivery. Title and risk of loss shall pass to Buyer at the time and place of delivery. Premium mode of shipment will not be used unless specifically directed in writing by Buyer and then only at Buyer's expense.

**MATERIAL SHORTAGES AND ALLOCATIONS:** In the event Seller is unable to obtain in a timely manner material sufficient to fulfill all of its orders on hand, Seller shall have the right as a result of said material shortages to equitably allocate lesser quantities of the products to be delivered to all buyers on a proportionate basis. The contract price shall be equitably adjusted, taking into consideration, among other things, the reduced quantity of items to be delivered and the increased production costs, if any, to Seller as a result of manufacturing lesser quantities than anticipated.

**CHANGES:** Buyer may, at any time, in writing, request changes within the general scope of this document in the drawings, designs, specifications, shipping or packing instructions or place of delivery. If any such changes cause an increase in the cost of, or the time required for, performance of Buyer's order affected by such a change, Seller shall make an equitable adjustment in the price, the delivery schedule or both accordingly.

**TERMINATION AND RETURNS:** For products fabricated to individual customer requirements, drawings, specifications, and/or designs, Seller reserves the right to fabricate the entire quantity ordered in one production run. In the event of cancellation in whole or in part of an order, any components, subassemblies, and/or finished assemblies on hand in quantities equivalent to the full production run for the entire quantity ordered, plus normal overrun, shall be considered as part of the applicable cancellation charges.

Buyer may cancel this order only by payment of Seller's cancellation charges which shall take into account expense already incurred, overhead, lost profit and commitments made by the Seller. Returns must be authorized by Seller and are subject to Seller's incoming inspection procedures. Products Manufactured to Buyer's specifications or special requirements are not subject to return.

**EXPERIMENTAL PRODUCTS:** If Seller delivers products identified as "prototypes", "samples for engineering approval", "on consignment", "for evaluation", or terms of similar meanings, Buyer agrees that such products are confidential and experimental in nature, that Buyer will limit their availability only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and no others, and that all information concerning such products shall remain the proprietary property of Seller and shall not be disclosed to any third party. It is anticipated that changes may be made in the manufacture of such products; therefore, Buyer shall communicate to Seller the data accumulated during the testing and evaluation of the products.

**TEST EQUIPMENT AND TOOLING:** Unless Seller otherwise specifically agrees in writing, all test equipment and tooling required to produce the products covered herein are to remain the property of Seller.

**QUALITY CONTROL PROCEDURES:** Seller's customary quality control procedures in force at the time products are manufactured, or services are rendered, respectively, shall apply to products and services covered by this document unless Seller otherwise specifically agrees in writing.

**DOCUMENTATION:** Qualification tests may be performed by Seller and test data supplied at the specific request and expense of Buyer. Documentation, including but not limited to, drawings, data, engineering

sketches, specifications, procedures, manufacturing, assembly, and test records, if furnished by Seller to Buyer without additional charge, shall remain Seller's property, shall be kept confidential by Buyer, shall not be reproduced, and shall be returned to Seller upon request unless Seller otherwise specifically agrees in writing.

**WARRANTY:** a) Seller warrants that each new product sold hereunder will substantially conform to Seller's specifications or drawings and as otherwise acknowledged or approved by Buyer or Buyer's representative (and for those of Buyer accepted by Seller in writing) and to be free from defects in material and workmanship under normal use and service. Seller's sole obligation and liability under this warranty is limited to the repair or replacement at its factory, at Seller's option, of any such product which proves defective within ninety (90) days after the date of delivery to the first end user which delivery must be made within six (6) months after delivery to Buyer, and is found to be defective in material or workmanship by Seller's inspection.

Buyer shall inspect and accept any products delivered, immediately after Buyer takes custody of such products. In the event the products do not meet the specifications or drawings, Buyer shall notify Seller in writing of such noncompliance and give Seller a reasonable opportunity to correct the noncompliance. Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such noncompliance in the event such written notification is not received by Seller within fifteen (15) days after the Buyer takes custody of the products delivered hereunder. Seller shall not be obligated or liable under this warranty for apparent defects or defects which examination discloses are due to tampering, misuse, neglect, improper storage or handling, normal wear and all cases where the products are disassembled by other than authorized Seller representatives. In addition, Seller shall not be obligated or liable under this warranty unless written notice of any defect shall be given to Seller within fifteen (15) days from the date such defect is first discovered.

Products for warranty consideration shall be returned with all transportation charges prepaid to Seller in shipping containers which are adequate to prevent loss or damage in shipment. Products repaired or replaced under this warranty are warranted for the unexpired portion of the original warranty.

Products returned to Seller for repair under this warranty remain the property of Buyer and, unless agreed to by Seller, Buyer will not debit Seller for the product's value.

b) SELLER DISCLAIMS ANY LIABILITY, WHETHER UNDER THIS WARRANTY OR OTHERWISE, FOR, AND BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER, ITS OFFICERS, AGENTS AND EMPLOYEES AGAINST ALL EXPENSES, LOSS, ATTORNEY'S FEES, COSTS, DAMAGES, AND LIABILITY ARISING FROM ANY FAILURE OF ITS PRODUCTS WHICH IS CAUSED BY, IN WHOLE OR IN PART, THE USE IN OR WITH PRODUCTS OR COMPONENT PARTS NOT MANUFACTURED BY SELLER, OR BY AN ALLEGED DEFECT RELATED TO DESIGN, LABELING OR MANUFACTURING SPECIFICATIONS SUPPLIED BY BUYER.

c) THE TERMS OF THE APPLICABLE WARRANTY OR WARRANTIES, AS THE CASE MAY BE, ASSET FORTH ABOVE, ARE THE SOLE AND EXCLUSIVE WARRANTY TERMS THAT SHALL HAVE ANY FORCE AND EFFECT IN THIS TRANSACTION, AND SUCH TERMS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREWITH EXPRESSLY EXCLUDED.

d) SELLER'S LIABILITY FOR ALL CLAIMS, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE, RELATING TO THE PRODUCTS SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR SUCH DEFECTIVE PRODUCT, IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFIT AND CLAIMS OF THIRD PARTIES), HOWEVER CAUSED, WHETHER BY THE NEGLIGENCE OF SELLER OR OTHERWISE.

**PATENT, TRADEMARK AND COPYRIGHT INDEMNITY:** Seller shall indemnify Buyer, Buyer's customer and any user from any and all damages and costs finally awarded for infringement of any existing patent, trademark or copyright in any suit by reason of the sale of any product sold to Buyer hereunder where Seller is an infringer with respect to its sale hereunder provided that Seller is promptly notified in writing of any such suit and Buyer offers Seller full and exclusive control of the defense of such suit when products of Seller only are involved, and Buyer fully cooperates with Seller in such defense. This indemnity shall not, however, extend to infringement or claims thereof resulting from Seller's compliance with Buyer's designs, processes, formulas, or approvals, use of the products in a manner to have them become infringing or use of the products alone or in combination with other equipment where the use is the subject of the claim. Seller's liability for damages hereunder is limited to those computed solely on the value of any product sold to Buyer hereunder. In no event shall Seller be liable for special, incidental or consequential damages or costs applicable thereto. The above indemnity is in lieu of any other indemnity or warranty, express or implied, with respect to patents, trademarks, or copyrights and shall in no event exceed the price paid by Buyer for such products.

**CLAIMS:** All claims (other than claims under the Warranty and Patent sections hereof) must be received by Seller within fifteen (15) days after receipt of goods. No claim for incidental, special or consequential damages will be considered. No setoff is allowed.

**WAIVER:** Failure by Seller to insist upon strict performance of any provision hereof by Buyer shall not be deemed to be a waiver by Seller of its rights or remedies available to it at law or equity and Seller shall not be required to proceed with performance of an order if Buyer is in default to Seller under it or any other order.

**FORCE MAJEURE:** Seller shall not be liable for delays in or failure of performance hereunder due to causes beyond its reasonable control, including, but not limited to, acts of God or public enemy, acts of government in either its sovereign or contractual capacity, acts of Buyer, fire, flood, earthquake or other natural disaster, strike or other labor dispute, acts of war, sabotage, insurrection, rebellion, or other acts of civil disobedience, failure of subcontractor to supply material, failure or delay in transportation, or equipment breakdown, nor shall Seller be liable for any reasonable delay in production or delivery. In the event of delay due to such cases, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**COMPLIANCE WITH LAWS:** Seller represents that, with respect to production of the products and performance of the serviced herein, it has complied with applicable governmental statutes, rules, regulations and orders including those pertaining to labor, wages, hours and other conditions of hiring and employment.

**EXPORT SALES:** Buyer agrees that it will not export or re-export directly or indirectly any of the products sold hereunder to any destination or to any person where such export or re-export is prohibited under law or regulation, or export or re-export such products without appropriate license(s) required by applicable law or regulations. For purposes of Export Sales, terms are subject to the latest version of Incoterms of the International Chambers of Commerce.

**GOVERNMENT SALES:** If the products herein are to be used in fulfilling a contract with the government, Seller will comply with requirements of such contract with are mandatory under the procurement statutes and which are applicable to Seller, provided that Seller has received written notice of such requirements from Buyer in sufficient time to incorporate their impact into the price and delivery schedule for such products. All Technical Data and Intellectual Property Rights shall remain the sole property of Seller. Seller's books and records may only be inspected by a representative of the government.

**GOVERNING LAWS:** Buyer's purchase of products hereunder shall in all respects be governed by the laws of the jurisdiction from which Seller mails this document.

**SEVERABILITY:** If any provision of this document is in violation of any governmental statute or regulations, or is illegal for any reason, said provision shall be self deleting without affecting the validity of the remaining provisions.