

General Terms & Conditions of Sale

1. **ACCEPTANCE AND CANCELLATION OF ORDERS.** A duly authorized officer or agent of Seller can only accept orders for goods in writing. Accepted orders can only be cancelled by Buyer upon written consent of Seller. In the event of cancellation or withdrawal of an order for any reason, and without limitation to Seller's remedy, reasonable cancellation or restocking charges, including all expenses and commitments made by Seller, shall be paid by Buyer. Special order items are non-cancelable and non-refundable. Furthermore, Seller shall have the right to deliver all goods covered hereby in a single lot or multiple lots, within the delivery time provided in such order.

2. **DELIVERY.** All goods are shipped EXW, Seller's facility (INCOTERMS 2000). The Buyer bears all costs and risks involved in shipping the goods from the Seller's premises to the desired destination. Choice of carrier, shipping method and route shall be at the election of Seller unless specifically designated by Buyer. Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, and shall include, without limitation, acts of God, acts or omissions of Buyer or civil or military authorities, fire, strikes, epidemics, quarantine restriction, flood, earthquakes, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies. In event of such delay, the contractual date of delivery shall be extended for a period equal to the time lost as a consequence of each delay without penalty to Seller. Seller shall be entitled to refuse or to delay shipments for failure by Buyer to pay promptly any payments due Seller on this or any other contract between Seller and Buyer.

3. **TERMS.** (a) Payment in full of net amount owing is due 30 days from the date of invoice. If payment is not received within 30 days, a late fee of 1% per month of the unpaid balance or the maximum amount allowed by law, whichever is less, shall be paid by Buyer, (b) Checks are accepted subject to collection. Buyer agrees to pay all costs of collection, including reasonable attorney's fees and costs. Any check received from Buyer may be applied by Seller against any obligation of Buyer to Seller under this or any other agreement, notwithstanding any statement appearing on or referring to such check. Acceptance of any partial payment shall not constitute a waiver of Seller's right to payment in full of all amounts owing from Buyer to Seller.

4. **SECURITY AGREEMENT.** Buyer grants Seller a purchase money security interest in the items sold hereunder whether including equipment, inventory, fixtures and/or general intangibles shipped by Seller at any time, including all accessions to and replacements thereto, and all proceeds thereof (collectively, the "Collateral") to secure the payment of the purchase price of such Collateral. Buyer grants Seller a limited power of attorney to file one or more financing statements signed by Seller on behalf of Buyer and authorizes Seller to use a copy of this agreement as an exhibit to any financing statement. Buyer agrees to cooperate fully with Seller in executing any additional documents, instruments, financing statements or amendments thereto as Seller may request to perfect or continue the security interest created by this agreement.

5. **INSPECTION AND ACCEPTANCE OF GOODS.** Buyer shall be responsible for conducting the final acceptance tests on the goods. Tests shall be completed within 10 days of receipt of goods. Unless Buyer notifies Seller in writing of Buyer's rejection, goods will be deemed acceptable. Seller shall elect to credit the account or replace without charge to Buyer all goods which, at the time of delivery, are not in accordance with their manufacturer's specifications. Buyer must return such goods to Seller's designated facility within 30 days from date of delivery in original package and condition, and accompanied by a specification in writing of the defects involved. Seller shall be entitled to examine such goods at Buyer's facilities prior to their return. Final inspection as to whether goods meet their manufacturer's specifications shall be made at Seller's designated facility, or may be based upon the manufacturer's actual test report. Other than the foregoing inspection and acceptance provisions, all sales of goods are final. Buyer shall have no right to return such goods, or cancel goods ordered prior to delivery, without the prior written consent of Seller. Notwithstanding the foregoing, in no event shall Seller issue a Return Manufacturer's Authorization ("RMA") beyond thirty (30) days from the date of delivery to Buyer of any goods.

6. **SELLER'S RIGHT TO INCREASE PRICES.** In the event Seller's cost for the goods increases, Seller reserves the right to increase the selling price of such goods ordered by Buyer but not yet shipped from Seller. The selling price quoted therein shall be increased by an equal percentage in Seller's cost for the goods, and Buyer agrees to pay such increased price.

7. **TAXES.** Seller's prices do not include sales, use, excise or similar taxes. All sales are considered taxable unless resale certificate is filled out, signed, and verified.

8. **WARRANTIES AND REMEDIES.** BUYER ACKNOWLEDGES THAT

SELLER IS ACTING SOLELY AS A THIRD PARTY DISTRIBUTOR OF THE PRODUCTS HEREIN. THE MANUFACTURER OR LICENSOR OF THE PRODUCTS SHALL BE SOLELY RESPONSIBLE TO BUYER AND TO OTHER PARTIES FOR ALL LIABILITY, CLAIMS, DAMAGES, OBLIGATIONS, DAMAGES, COSTS OR EXPENSES, INCLUDING WITHOUT LIMITATION, ANY SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS, BUSINESS LOSSES, PERSONAL PROPERTY DAMAGE, AND PERSONAL INJURY), ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE SUPPLYING OF THE PRODUCTS TO BUYER OR ANY RELATED SERVICES PROVIDED TO BUYER, ANY THIRD PARTY RIGHTS IN THE PRODUCTS, OR ANY USE OF THE PRODUCTS, OR THE RESULTS OR DECISIONS MADE OR OBTAINED BY USERS OF THE PRODUCTS. BUYER AGREES TO LOOK SOLELY TO THE MANUFACTURER OR LICENSOR OF THE PRODUCTS FOR COMPLIANCE WITH THE MANUFACTURER'S OR LICENSOR'S WARRANTY AND FOR ANY MAINTENANCE, SUPPORT OR REPAIR OF THE PRODUCTS. THE WARRANTY DELIVERED TO SELLER BY THE MANUFACTURER OR OTHER VENDOR THEREOF IS HEREIN ASSIGNED TO BUYER, TO THE EXTENT SUCH ASSIGNMENT IS PERMITTED BY THE TERMS THEREOF. NOTWITHSTANDING THE FORE-GOING, NO SUCH WARRANTY SHALL APPLY TO ANY GOODS WHICH HAVE BEEN ALTERED OR REPAIRED, EXCEPT BY SELLER OR THE MANUFACTURER, OR WHICH HAVE BEEN SUBJECT TO MISUSE, NEGLIGENCE OR ACCIDENT. SUCH WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER AND SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, AND IN PARTICULAR SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF SUCH GOODS OR THE FITNESS OF SUCH GOODS FOR BUYER'S PURPOSE OR USE. SELLER MAKES NO REPRESENTATION, COVENANT OR WARRANTY WITH RESPECT TO THE EXTENT OR ENFORCEABILITY OF THE MANUFACTURER'S OR LICENSOR'S WARRANTY. NO REPAIR OR REPLACEMENT OF GOODS BY SELLER, MANUFACTURER OR LICENSOR SHALL EXTEND THE WARRANTY PERIOD OF MANUFACTURER OR LICENSOR. SELLER NEITHER ASSUMES NOR AUTHORIZES BUYER OR ANY OTHER PERSON TO ASSUME ON BEHALF OF SELLER ANY OTHER LIABILITIES IN CONNECTION WITH THE SALE OF GOODS. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES DUE TO DELAY IN DELIVERIES, SERVICE, USE OF EQUIPMENT OR OTHER PERFORMANCE AS SPECIFIED IN OR CONTEMPLATED BY THIS AGREEMENT.

9. **PATENTS.** Buyer is to look solely to the manufacturer or licensor of the products with respect to any claim of patent infringement, trademark, copyright, mask-work right, trade secrets or similar proprietary rights. Buyer agrees to protect, defend, indemnify and hold harmless Seller from all, costs, expenses and attorneys' fees which Seller may incur as a result of any and all claims, demands, legal action or judgments arising out of or relating to any use, modification or enhancement of the goods purchased by Buyer.

10. **DELIVERABLE SERVICES.** All fee-based and/or cost-based services performed by Seller for Buyer are sold and itemized separately. Such services shall be mutually agreed upon in a separate written and signed agreement as defined in a written Statement of Work (SOW). The services covered under this paragraph shall include but not be limited to design: design engineering; integration and assembly; testing: software, system, or hardware installation and configuration; component programming or coding; special storage, handling, or logistics: special packaging and/or labeling: kitting: and manufacturing or production support services.

11. **INSTALLATIONS.** Buyer shall be solely responsible for the installation and operation of the goods covered hereby. Seller shall have no responsibility or liability for the content or use of any technical advice offered or given in connection with the use of or installation of any such goods. Without Seller's prior written consent, Buyer shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation or maintenance of goods purchased by Buyer.

12. **PROHIBITION OF PRODUCT USE IN LIFE SUPPORT APPLICATIONS.** Goods sold by Seller are not authorized to be used in life support equipment or for applications in which failure or malfunction of the goods would create a situation in which personal injury or death is likely to occur. Any such use or sale of goods sold by Seller is at the sole risk of Buyer, and Buyer agrees to indemnify and defend Seller against, and hold Seller harmless from, all damages, costs and expenses, including without limitation attorneys' fees and costs relating to any lawsuit or threatened lawsuit, arising out of such use or sale.

13. **SYSTEM MAINTENANCE.** Buyer acknowledges that a separate written agreement between Buyer and a third party is required for any and all system maintenance. Where Buyer does not elect to enter into a separate written system maintenance agreement with a third party, Buyer acknowledges its sole right relating to system maintenance is as stated in these Terms and Conditions of Sale.

14. **DEFAULT.** In the event of any default, Buyer shall pay all costs incurred by Seller in collecting any amounts due under this agreement, including reasonable attorneys' fees and costs. The waiver by Seller of any breach hereof or default in any payment shall not be deemed to constitute a waiver of any succeeding breach or default. In the event of default, Seller shall have all the remedies provided under the Uniform Commercial Code, which shall be cumulative with one

another and with any other remedies which Seller may have at law, in equity, under any agreement of any type, or, without limitation, otherwise. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time. No action, regardless of form, arising out of, or in any way connected with, the goods furnished or services rendered by Seller, may be brought by Buyer more than one year after the cause of action has accrued.

15. **ENTIRE AGREEMENT AND ASSIGNMENT.** This agreement sets forth the sole and entire agreement between the parties with regard to the subject matter hereof and supersedes any and all prior written or contemporaneous oral agreements between them regarding the same. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. No subsequent alteration of this agreement whatsoever shall be binding upon Seller unless reduced to writing and signed by both Seller and Buyer. No agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty covering the materials sold under this agreement, and unless an affirmation, representation or warranty made by an agent, employee or representative is specifically included within this agreement, it has not formed a part of the agreement and shall not in any way be enforceable against the Seller. Any assignment of this agreement or any rights hereunder by Buyer shall be void without Seller's written consent.

16. **BUYER'S TERMS AND CONDITIONS.** Any conflicting statements or terms listed on the Buyer purchase orders, invoice, confirmations or other Buyer generated documents ("Buyer Documents") are negated by submission of the Standard Terms and Conditions of Credit Sales and the issuance of credit by Seller. All different or additional terms and conditions contained in any Buyer Documents are hereby objected to by Seller. Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions of Sale, unless otherwise specifically agreed to in writing by Seller. Commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions, or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any goods or services shall be deemed acceptance of the terms and conditions stated herein.

17. **GENERAL.** The parties expressly exclude the applicability of the International Sale of Goods. Buyer expressly acknowledges and agrees that only Seller has the sole discretion to elect binding arbitration in lieu of California court jurisdiction. Where Seller elects binding arbitration, written notice shall be issued to Buyer stating forum and location of such arbitration in the state of California. All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. If any provision or portion of this agreement is held to be invalid, illegal, unconscionable or unenforceable, the other provisions and portions hereof shall not be affected. The several captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof.

18. **EXPORT COMPLIANCE.** Buyer acknowledges that goods, services, technical data, and all information communicated from Seller that is intended for export, re-export, and/or international sales, is made with full disclosure to Seller as to intended destination outside the United States and that Buyer is fully compliant with United States Export Laws.