



## **Terms and Conditions**

1. **ACCEPTANCE AND CANCELLATION OF ORDERS.** Orders for goods can only be accepted in writing by a duly authorized officer or agent of Seller. 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 right to assert any other remedy to which Seller may be entitled, reasonable cancellation or restocking charges, including all expenses and commitments made by Seller, shall be paid by Buyer notwithstanding the above. Special order items are non-cancelable and non-refundable. In the case of returns, Buyer may be charged a restocking fee of 15%.
2. **DELIVERY.** All shipped goods are EXW (INCOTERMS 1990) Seller's facility. Buyer bears all costs and risks involved in taking 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 or damages suffered by Buyer 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, computer virus, delays in transportation or inability to obtain necessary labor, materials or supplies. In event of 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. 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. Buyer shall pay for storage charges if products are held by Seller at Buyer's request pending instruction or rescheduled delivery.
3. **TERMS.** 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. 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. In order to defray the cost of Buyer account administration, any credit balance, or other sum owed to Buyer which remains unclaimed by Buyer for a period of twelve months will become the property of Seller.
4. **SECURITY AGREEMENT.** Buyer hereby grants Seller a security interest in the items sold by

Seller to Buyer, whether consisting of equipment, inventory, fixtures, general intangibles and/or other property 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 the Collateral. Buyer authorizes Seller: (i) to file one or more financing statements in all States, Counties and other jurisdictions as Seller may elect without Buyers signature if permitted by law and (ii) to use a copy of this agreement as an exhibit to any financing statement. At Sellers election, in addition to or instead of any other description of Collateral, any financing statement description may use the terms .all assets, .all personal property. or words to similar effect. 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. Upon any breach by Buyer of these terms and conditions, Seller will have all rights and remedies of a secured party under the California Uniform Commercial Code, which rights and remedies will be cumulative and not exclusive. In the event of litigation arising from this agreement or if other enforcement action is taken by Seller, Buyer shall pay to Seller all costs and expenses incurred by Seller in collecting any sums owing by Buyer (which may include, but are not limited to collection agency and reasonable attorneys. fees including representation related to bankruptcy proceedings). If Seller incurs costs collecting on any judgment arising out of Buyers breach, Buyer will be responsible for such costs, and this provision will survive the entry of any such judgment.

5. INSPECTION AND ACCEPTANCE OF GOODS. Products are deemed accepted by Buyer unless Buyer notifies Seller in writing within 15 days of delivery of product shortages, damage or defect. No returns may be made for any reason without a Return Authorization Form (.RMA.) issued by Seller. Buyer shall be responsible for conducting the final acceptance tests on the goods. Unless Buyer notifies Seller in writing of Buyers 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 Sellers 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 Buyers facilities prior to their return. Final inspection as to whether goods meet their manufacturer's specifications shall be made at Sellers 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 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. 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.** Unless specifically otherwise agreed in writing by Seller, Buyer acknowledges that products sold by Seller are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Buyer will indemnify, defend and hold Seller harmless from any loss, cost or damage resulting from Buyers breach of the provisions of this paragraph, 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. Buyer acknowledges its sole right relating to system maintenance is as stated in paragraph 8 hereof.

14. **SOFTWARE.** Any software included in or relating to products supplied by the Manufacturer is licensed pursuant to separate licensing agreements or other arrangements directly to Buyer from the manufacturer or licensor of the software. Seller makes no representation or warranty and will have no liability in connection with such software. Buyer agrees to comply with the manufacturer's or other requirements with regard to proprietary and similar rights in and to such software (including any requirement to enter into separate license agreement and prohibitions against duplicating or disclosing the same), even if the seal or any .shrink wrapped. Software has been broken by Seller and will indemnify Seller against and hold it harmless from any and all liability, cost or expense arising from a breach or purported breach of such requirements.

15. **DEFAULT.** In the event of any default, Buyer shall pay all costs incurred by Seller in collecting any amounts due under this agreement, including without limitation reasonable attorneys' fees and costs including fees and costs arising from the representation of Seller in a bankruptcy of Buyer. 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. Similarly, the acceptance of a partial payment shall not constitute a waiver of a payment default and shall not preclude Seller from exercising any other remedy to which Seller would otherwise be entitled. In the event of default, Seller shall have all the remedies provided under the California 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 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.

16. ENTIRE AGREEMENT AND ASSIGNMENT. This agreement sets forth the sole and entire agreement between Seller and Buyer with regard to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written 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 Seller has any authority to bind Seller to any affirmation, representation or warranty covering the materials sold under this agreement, and unless an affirmation, representation or warranty made by a tangent, 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 Seller. Any assignment of this agreement or any rights hereunder by Buyer shall be void without the express written consent of a duly authorized representative of Seller.

17. BUYER'S TERMS AND CONDITIONS. All quotations and sales are made only upon these terms and conditions and those on the front of this document. This document and not any cancel goods ordered prior to delivery, without the prior written consent of Seller. Notwithstanding the foregoing, in no event shall Seller issue a RMA beyond ninety (90) days from the date of delivery to Buyer of any goods.

6. SELLER'S RIGHT TO INCREASE PRICES. Seller reserves the right to increase the selling price of any and all goods ordered by Buyer but not yet shipped from Seller. The selling price quoted 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 and provided to Seller.

8. WARRANTIES AND REMEDIES. Buyer acknowledges that Seller is not the manufacturer of the products. All products, and the components and materials in any assembly of customized products, are covered by, and subject to, the terms, conditions, and limitations of the manufacturer's standard warranty, which warranty is expressly in lieu of any other warranty, express or implied of or by Seller or the manufacturer. Buyer's exclusive remedy, if any, under these warranties is limited, at Seller's election, to any one of (a) refund of Buyer's

purchase price (b) repair by Seller or the manufacturer of any products found to be defective or (c) replacement of any such product. Buyer acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY SELLER OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, AND SELLER ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURERS PRODUCT SPECIFICATIONS OR PERFORMANCE OR ADEQUACY OR ANY DESIGN OR SPECIFICATION PROVIDED TO SELLER BY OR ON BEHALF OF BUYER. Use of Buyers part number on this document or on any products is for convenience only and does not constitute any representation by Seller with respect to the performance, specifications or fitness of any part for any purposes. Except for the warranty coverage referenced in paragraph 8 above, NEITHER SELLER NOR ITS SUPPLIERS HAVE ANY LIABILITY OR OBLIGATION TO BUYER OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY PRODUCTS FOR ANY PURPOSE, BY ANY DEFICIENCY OR DEFECT IN ANY PRODUCT WHETHER OR NOT COVERED BY ANY WARRANTY, BY THE USE OR PERFORMANCE OF ANY PRODUCTS OR BY ANY DELAY IN SELLER.S PERFORMANCE OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXPEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING WITHOUT LIMITATION, PROPERTY DAMAGE, PERSONAL INJURY OR LOSS OF BUSINESS OR PROFIT, WHETHER OR NOT BUYER INFORMED SELLER OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. The performance of any value -added service may void the manufacturer's warranty and render products non-returnable. Orders incorporating such services are accordingly, non-cancelable and the products are non-returnable. Any third party value-added service provider is deemed to be an agent of Buyer.

9. PATENTS. Indemnification of Buyer shall be supplied only by the manufacturer. Under no circumstances shall Seller be obligated to indemnify, hold harmless or defend Buyer from any third party suit 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. purchase order or other Buyer document (which, if construed to be an offer is hereby rejected), will be deemed an offer or an appropriate counter-offer and is a rejection of any other terms or conditions. Buyer, by accepting any products, making any payments, or ordering any products having previously received these terms and

conditions, will be deemed to have assented to these terms and conditions, notwithstanding any terms contained in any prior or later communication from Buyer, and whether or not Seller specifically or expressly objects to any of Buyer's terms. Seller's failure to object to any document, communication or act of Buyer will not be deemed a waiver of any of these terms and conditions. Any addition or change to these terms and conditions must be specifically agreed to in writing by a duly authorized officer of Seller before becoming binding on Seller.

18. **GOVERNING LAW.** This agreement, and terms, conditions, covenants and provisions contained herein and transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles. Buyer hereby agrees that, at Seller's option, any dispute arising out of or relating to this agreement or its terms, conditions, covenants or provisions or the transactions contemplated hereby, may be resolved by the courts in Orange County, State of California, United States of America, and hereby submits itself to the nonexclusive jurisdiction of said courts with respect to any such dispute. Buyer further agrees that, at Seller's sole election, any such dispute shall be determined by binding arbitration proceedings to be held in the State of California upon written notice by Seller to Buyer electing such arbitration and stating the forum and location of the such arbitration.

19. **EXPORT COMPLIANCE; U.S. GOVERNMENT CONTRACTS .** 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. If Buyer's order is placed under a contract with the United States Government, Seller agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which Buyer has, at the time of order placement, placed Seller on written notice. In no event will United States Government Cost Accounting Standards apply. All rights in technical data and software owned or licensed by Seller or the manufacturer are hereby reserved and deemed restricted or limited.

No provision of Buyer's contract with the United States Government will be binding on Seller or the manufacturer except as expressly set forth in this paragraph. Any or all products may be subject to export or resale restriction or regulation, and Buyer acknowledges that it will comply with such regulations or restrictions. Any or all products may have been imported. Country of origin information is as provided to Seller by its suppliers and is, where applicable, located on the products themselves or the supplier's inmost packaging. The parties expressly exclude the applicability of the International Sale of Goods.

20. **FAIR LABOR STANDARDS ACT.** Seller certifies that it complies with all applicable requirements of Section 6, 7 and 15 of the Fair Labor Standards Act, as amended and of regulations and orders of the United States Department of Labor issued under Section 14.

21. GENERAL. All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer and inure to the benefit of Seller and its successors and assigns. 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 captions used herein are for the convenience of the parties only and shall not affect the construction or interpretation hereof.