

TERMS AND CONDITIONS OF SALE

1. Your order is accepted, but acceptance is expressly conditioned upon acceptance by you of these terms and conditions. The agreement between Seller and Buyer (the "contract") with respect to the products (the "products") and/or services (the "services") shall consist of the Terms contained herein together with any additions or revisions of such terms mutually agreed to in writing by Seller and Buyer. Seller objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in any purchase order or other communication from Buyer to Seller unless specifically agreed to by Seller in writing. Prior courses of dealing, and verbal agreements not reduced to a writing signed by Seller, to the extent they modify, add to or detract from the contract shall not be binding on Seller. Failure by seller to exercise any right or remedy under the contract will not be deemed a waiver of such right or remedy unless in a writing signed by Seller, nor shall any waiver be implied from the acceptance of any payment. No waiver by Seller of any right shall extend to or affect any other right, nor shall a waiver by Seller of any breach extend to any subsequent similar or dissimilar breach. The contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Buyer may not assign this contract without the express written approval of Seller. Any provision of this contract that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be limited or eliminated to the minimum extent required by that jurisdiction, and the remaining provisions of the contract will remain in full force and effect.
2. This contract may not be modified or rescinded except by a writing signed by Seller and Buyer. If all or part of the contract is terminated by such modification or rescission, Buyer, in the absence of a contrary written agreement between Seller and Buyer, shall pay termination charges based upon cost determined by accepted accounting principles, plus a reasonable profit on the entire order. Cost shall include any amount Seller must pay to its suppliers due to any termination by Seller of a purchase order for products or services intended for Buyer.
3. Buyer shall pay the purchase price for products and services within thirty (30) days from the date of invoice. Cash discounts do not apply to cases, reels, spools or transportation charges. The purchase price for the products is F.O.B. first point of shipment unless otherwise agreed to in writing. Seller reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance in the amount of sale. Seller may setoff any amount due from Buyer to Seller, whether or not under this contract, from any amounts due to Buyer. Title to and risk of loss of the products pass to Buyer upon delivery to the carrier at Seller's facility. Title to any software, hardware, and/or circuit board shall remain with the licensor and Buyer shall be granted a license for the software, hardware, and/or circuit board. Circuit boards are copyrighted by Seller and Buyer shall not copy, outsource, disassemble, decompile, unbundle, engineer, reverse engineer, or translate any part of the software, hardware, and/or circuit board, or make any other changes or revisions, or otherwise attempt to reconstruct or discover the electronic mechanisms of the software, hardware, and/or circuit board. Buyer agrees to be bound by any license terms pertaining to software sold hereunder. In the event Buyer fails to pay the total purchase price within said thirty (30) day period, the maximum allowable charge and/or interest allowed by applicable laws shall be applied to all past due accounts commencing from the due date of the invoice until paid. Seller shall also be entitled, in addition to all other remedies available at law or in equity, to recover reasonable attorneys' fees and/or other expenses in collecting the purchase price or otherwise enforcing or successfully defending itself in respect of this contract.
4. Any tax or other governmental charge upon the provision of services, or the production, sale, shipment, transfer, consumption, or use of the products which Seller is required to pay or collect from Buyer shall be paid by Buyer to Seller, unless Buyer furnishes Seller with exemption certificates acceptable to taxing authorities. Such amount shall be due whether or not included on the invoice.
5. Shipping date or other applicable performance date is estimated on the basis of immediate receipt by Seller of Buyer's order and all information, drawings and approvals to be furnished by Buyer, and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Seller's reasonable control. Seller will in good faith endeavor to ship products or perform services by the estimated date. Seller shall have the right to make partial shipments. All changes in specifications or estimated shipping or performance date will be by mutual written agreement of Seller and Buyer and where such changes affect Seller's time or cost of performance, an equitable adjustment in estimated shipping/performance date or purchase price, or both, will be made. If no packaging, loading or bracing requirements are stated, Seller will comply with minimum specifications for the method of transportation specified. If no method of transportation is specified, shipment will be by a reasonable method of transportation.
6. Buyer shall submit all claims for shortages in writing to Seller within thirty (30) days from the date that Buyer receives the products; otherwise such claims shall be waived. Quantities are subject to normal manufacturer allowances. In the case of wire and cable, such allowances are plus 10% and minus 5%. The purchase price for products will equal the unit price multiplied by the quantity shipped. Installation and final inspection of products prior to installation will be Buyer's obligation.
7. Seller passes on and assigns to Buyer the warranties made to Seller by its suppliers, which at a minimum, include a warranty that the products at the time of shipment to Buyer will be free of defects in materials and workmanship, and will materially in accordance with specifications provided by the manufacturer. Seller's warranty in its entirety shall be deemed limited to and shall not extend beyond such manufacturers' warranties. The length of the warranty period will be the length established by the manufacturer of the product and if no length is specified by the manufacturer, shall in no event extend beyond one (1) year from the date of shipment. Buyer shall proceed exclusively and directly against such supplier at Seller's request. This warranty does not cover wear and tear and shall be ineffective and shall not apply to products that have been subjected to misuse and abuse, neglect, accident, damage, improper installation or application, or maintenance. Product must be in original, unmodified condition with the Seller's product label attached. Returns must be accompanied by an authorization number provided by Seller and only upon prior authorization. Buyer will inspect the products upon delivery and will promptly notify Seller in writing of any defect in the products. Seller's sole obligation under these warranties will be limited to either, at Seller's option and expense, repairing or furnishing a replacement for the products or parts thereof which Seller reasonably determines do not conform to these warranties, and Buyer's exclusive remedy for breach of any such warranties will be enforcement of such obligation of Seller. All transportation costs of and in-transit risk of loss and damage to products or parts thereof returned for warranty repair, and to such repaired or replacement products or parts thereof returned to Buyer, will be borne by Buyer. No agent, employee or representative of Seller has any authority to bind Seller to any representation, affirmation or warranty concerning the products and any such representation, affirmation or warranty shall not be deemed to have become part of the basis of this contract and shall be unenforceable. Seller will perform the services in accordance with Seller's customary procedures. Seller makes no warranty that software, hardware, and/or circuit board will operate uninterrupted or error free. THE FORE GOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND BUYER WAIVES, ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW (STATUTORY OR OTHERWISE) AND WHETHER OR NOT OCCASIONED BY SELLER'S NEGLIGENCE.
8. IN NO EVENT SHALL SELLER OR ITS SUPPLIERS BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER ARISING, INCLUDING SUCH DAMAGES OCCASIONED BY SELLER'S NEGLIGENCE, nor shall Seller's liability on any claims for damages arising out of or connected with the contract or the manufacture, sale, delivery or use of the products exceed the purchase price of the products and/or services giving rise to the claim. Seller shall not be liable for any failure to perform its obligations under the contract resulting directly or indirectly from or contributed to acts of God, acts of Buyer, civil or military authority, fires, strikes or other labor disputes, accidents, floods, war, riot, inability to secure material or transportation facilities, acts or omissions of carriers, or any other circumstances beyond Seller's reasonable control. Seller shall have no liability under this contract than otherwise expressly provided in this contract.
9. Seller will hold Buyer harmless against any rightful claim of any third person by way of infringement of any United States Letters Patent by products which are of Seller's own manufacture, but if Buyer furnishes specifications to Seller, Buyer will hold Seller harmless against any such claim which arises out of compliance with the specifications; provided that the party seeking to be held harmless notifies the other party and gives it the right to defend. Seller makes no warranty that the products will be delivered free of the rightful claim of any third party by way of infringement of any intellectual property rights or the like. Seller's obligation under this paragraph shall not apply to any infringement consisting of the use of products as part of goods manufactured by Buyer or others.
10. Buyer understands that products supplied by Seller may be subject to the jurisdiction of U.S. export controls and trade sanctions, and Buyer represents and warrants that it will not violate U.S. export-related laws with respect to products supplied by Seller.
11. Buyer will not disclose or make available to any third party Seller's data or other proprietary information without Seller's prior written authorization.
12. This contract shall be governed by the Uniform Commercial Code ("UCC") as adopted in the State of Seller's principal place of business as effective and in force on the contract date. Wherever a term defined by said UCC is used in these terms and conditions, the definition contained in the UCC is to control. Any action for breach of the contract or any covenant or warranty must be commenced within one (1) year after the cause of action accrues.