



## TERMS AND CONDITIONS

1. **General** - Any order based on issued Quotation is subject to acceptance by Seller at Dudley, MA. Buyer's acceptance of Seller's quotation(s) shall be deemed to constitute acceptance of these terms and conditions. These terms and conditions shall supersede any conflicting provisions of any purchase order(s) or other communications of Buyer. Neither Seller's acknowledgment of Buyer's purchase order, commencement of performance, nor delivery of product(s) shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions. No changes or modification of any of these terms and conditions shall be valid or binding on either party unless in writing and signed by an authorized representative of the party to be bound.
2. **Ordering Policies** – Orders may be placed with the Seller's staff directly. Please reference Seller's Quotation Number and Seller's part number when ordering product(s). When ordering standard catalog product, specify the catalog number, model number and name of component desired. All orders must contain delivery dates with quantities that equal the total quantity on the purchase order. All quotations are valid for ninety (90) days from the date of issue unless otherwise noted.
3. **Pricing** - The purchase price quoted by the Seller does not include any taxes or other federal, state or local governmental charges on the production, sale or shipment of the product(s), which shall be the sole responsibility of the Buyer. In addition, the purchase price shall not include the following, each and any of which shall be invoiced to the Buyer at the Seller's established charge rate:
  - a. Changes in drawings and specifications or changes in delivery requirements.
  - b. Additional testing and or processing.
  - c. Additional delays caused by defective Buyer supplied, materials, parts and components.
  - d. Extra set-ups and other additional effort incurred because of delivery of Buyer supplied materials, parts and components not in accordance with agreed schedules.
4. **Shipping** – Unless otherwise specified, shipments are F.O.B. Dudley, MA. Seller will ship product via UPS in the U.S. International shipments are made by: DHL, Federal Express, UPS or other specified service methods. Next day shipment will be made by Federal Express. All costs of shipment shall be borne by Buyer. If Buyer requires a preferred method of shipment, it should be indicated at the time of placement of the order.
5. **Payment Terms** – First time orders are to be paid in full before shipment. This can be accomplished by Credit Card or Company Check. Once approved for open account Seller's payment terms are Net 30 Days from date of invoice. Orders requiring a Letter of Credit will not be entered until Letter of Credit is received and meets Seller's standard terms.  
**NOTE: Late payments will be subject to a 1.5% finance charge.**
6. **Export - We follow ITAR Regulations.** All orders will need an "End User Statement" before shipment is made.
7. **Rescheduling of Deliveries** – a) Rescheduling of delivery dates must be received two months prior to the original scheduled delivery date. Any request by Buyer for a variance from this condition must be submitted in writing to Seller, setting forth in detail the reasons for the request. Seller will then evaluate each request on a case-by-case basis. b) No product may be rescheduled more than two months past the original final scheduled delivery date of the purchase order. Any request by Buyer for a variance from this condition must be submitted in writing to Seller, setting forth in detail the reasons for the request. Seller will then evaluate each request on a case-by-case basis.



8. **Cancellation by Buyer** – The Buyer may cancel an order for any product(s) that are not deemed “NON RETURNABLE” by submitting a written notice of cancellation to the Seller before such product(s) are delivered. If the Buyer cancels an order, the Seller is to be compensated for all incurred charges to date that the Seller expended or committed, up to and including the date on which the written notice of cancellation was received by the Seller upon cancellation and payment by the Buyer, all parts will become the Buyer’s property.
9. **Changes, Deviation from Specifications** – No changes will be made in product specifications without Seller’s prior written authorization. If the Buyer wishes to expand or modify the work scope of the contract between Seller and the Buyer, the Buyer must submit changes in writing. Seller will respond promptly to such a request by stating in writing what effect, if any, the request will have on the purchase price and delivery date of the product(s). After Seller and the Buyer agree upon a work scope change and any adjustments to the purchase price or delivery date, the Buyer shall submit an amended purchase order to Seller, signed by an authorized representative of the Buyer.
10. **Warranty.** Seller warrants that all product(s) shall be manufactured to Buyer’s designs, drawings or specifications, and shall be free from manufacturing defects. Seller shall repair, or at its sole option replace, any product which fails to conform to Buyer’s designs, drawings or specifications within (1) year of invoice. Buyer shall provide written notice to Seller describing the defect and obtain Seller’s approval to return the product(s) for verification of defect. Upon determination that the warranty is effective, Seller shall have the option either to replace or repair any defective product(s), to refund the purchase price upon return of the defective product(s), or to grant a reasonable allowance to Buyer on account of such defects. Seller’s liability and Buyer’s exclusive remedy for defective product(s) shall be limited solely to such replacement, repair, or allowance, as Seller may elect. Seller shall be given reasonable opportunity to investigate all claims and no product(s) shall be returned to Seller until a Return Material Authorization (RMA) is issued for the product being returned.

This warranty shall not apply with respect to any defect arising from Buyer’s willful damage, negligence, abnormal working conditions, misuse, or alteration or repair of any product without Seller’s prior written consent.

Seller shall be responsible for all costs of repair of product(s) which fail to conform with Buyer’s designs, drawings or specifications, provided however, that all repairs will be made with the prior written approval of Buyer, which such approval shall relieve Seller of any further liability. Buyer will be invoiced for replacement of nonconforming product(s), and credit will be issued upon the return of the defective product to the Seller. Product(s) and packaging that are returned to the Seller become the sole property of the Seller upon such return.

**THE EXPRESS WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. BUYER UNDERSTANDS THAT SELLER GIVES NO WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, AND THAT THERE WILL BE NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ITEMS SOLD.**

**SELLER’S OBLIGATIONS IN THE EVENT OF A MANUFACTURING DEFECT IS LIMITED TO THE REPAIR OR REPLACEMENT, BY SELLER, OF ANY PRODUCT WHICH FAILS TO CONFORM TO BUYER’S DRAWINGS OR SPECIFICATIONS, PROVIDED, HOWEVER, IF THE COST OF REPAIR OR REPLACEMENT OF ANY PRODUCT EXCEEDS THE PRICE OF SUCH PRODUCT, THE SELLER MAY, AT ITS SOLE OPTION, REFUND THE PRICE OF SUCH PRODUCT TO THE BUYER.**

**THESE ARE THE BUYER’S SOLE AND EXCLUSIVE REMEDIES. IF THESE LIMITED REMEDIES ARE HELD TO HAVE FAILED THEIR PURPOSE, OR ARE OTHERWISE HELD INAPPLICABLE OR INVALID, THE SELLER’S LIABILITY IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCT, REGARDLESS OF THE LEGAL THEORY OF ANY CLAIM. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO INTERRUPTION OF BUSINESS OR LOSS OF BUSINESS OR PROFIT), REGARDLESS OF WHETHER THE LIMITED REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS FAIL THEIR ESSENTIAL PURPOSE.**



11. **Indemnity; Insurance Coverage –**

- a. The Buyer shall fully indemnify, defend and hold harmless the Seller, its subsidiaries and affiliates and their respective officers, agents and employees from and against any and all losses, liabilities, claims, judgments, awards, penalties, fines, interest and expenses (including attorney fees and other costs of litigation), asserted against, imposed upon or incurred by Seller resulting from or arising out of any claim, suit or action (including any for personal injury or property damage), recall, government investigation or proceeding against the Seller.
- i. Related to any act (whether negligent, willful or otherwise) or omission of Buyer, its officers, agents and employees;
  - ii. Resulting from a defect in any of Buyer's product(s); or
  - iii. Arising in any other respect out of the manufacture, sale or use of the product(s) sold by the Seller to the Buyer. Seller shall provide Buyer with prompt notice of claims made under the terms of this indemnity provision and shall reasonably cooperate with Buyer in the defense of such claims. Buyer shall pay all expenses incurred by the Seller, its officers, agents and employees in cooperating with Buyer in such defense.
- b. Buyer further agrees, with respect to any of its product(s) incorporating or using any product, to limit the warranties extended to purchasers or users of said product(s), and to limit the remedies available for such product(s), to the full extent allowed by law. Upon request, Buyer shall provide Seller with copies of all warranties and disclaimers extended by Buyer to customers and users of its product(s).

12. **License** - The supplying to Buyer by Seller of any product(s) specified does not in any way convey or grant to Buyer any license or right to any of the production processes owned or to make or have made the product(s) supplied or any additional product(s) (whether or not identical to the product(s) supplied by Seller) coming within past or future patents and/or inventions owned, made or controlled by Seller.

Buyer agrees to indemnify and hold Seller harmless against all losses, damages and expenses arising out of any claim for infringement of any article patent in connection with the product manufactured and sold hereunder or infringement of any patent relating to a specific process or producing said product.

13. **Intellectual Property/Reverse Engineering** - Buyer agrees that all rights, title and interest in and to any inventions, discoveries, improvements, methods, ideas, computer and other apparatus programs and related documentation, other works or authorship fixed in any tangible medium of expression, mask, works, or other forms of Intellectual Property, whether or not subject to statutory protection, which are made, created, developed, written, conceived or first reduced to practice by Seller solely, jointly or on its behalf, in the course of, arising out of, or as a result of work performed under an order, and any related tooling, setup, fitting-up and preparation charges whether or not invoiced, shall belong to and be the sole and exclusive property of Seller. Buyer agrees not to reverse engineer all or any portion of any product(s), nor allow or assist others to do so. Buyer agrees not to remove, alter, erase, deface or cover over any markings on the product(s) or its packaging.
14. **Force Majeure** – Failure of Seller to make any one or more deliveries (or portions thereof) hereunder when due shall not subject the Seller to any liability to the Buyer if such failure shall be caused or occasioned by Act of God or the public enemy, governmental action, fire, explosion, flood, drought, war, riot, sabotage, embargo, strikes, or other labor trouble failure, in whole or in part of Seller's suppliers or any subcontractor to deliver on schedule materials, equipment, or machinery to Seller, interruption of or delay in transportation, shortage of fuel, energy or utilities or by any other event or circumstance of a similar or different nature beyond the reasonable control of the Seller so failing; and, at the option of the Seller so failing, the total quantity to be delivered hereunder shall be reduced by the quantity of the delivery or deliveries (or portions thereof) not made on account of any of the above causes. In no event shall Seller be obligated to purchase product(s) from others in order to enable it to deliver product(s) to Buyer hereunder.

*These terms and conditions, together with the order and other material, set forth the entire understanding of the parties with respect to the subject matter hereof, and supersede and replace all prior discussions, writing or understandings between the parties on such subject matter. These terms and conditions and such order and other material may be changed or terminated only by a writing signed by both parties. No written purchase order shall affect or vary these terms and conditions. These terms and conditions are accepted by Buyer if Buyer either does not object within five (5) business days from firm receipt of an order acknowledgement or accepts delivery of product(s) from Seller, whichever is earlier. Failure of either party to insist on strict compliance with any provision hereof, or to exercise any right hereunder, shall not constitute a waiver of such provision or right in any other instance. Section headings are for convenience of reference only and shall not have any effect upon the interpretation of these terms and conditions. Neither Buyer nor Seller may assign any rights or obligations under these terms and conditions or such order or other material except with the other's prior written consent, and any such attempted assignment shall be void. These terms and conditions, such order and such material shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, applicable to contracts executed and performed entirely within Massachusetts and any legal action or proceeding with respect thereto shall be brought exclusively in the courts of the Commonwealth of Massachusetts.*

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