

Device Engineering Inc - Standard Terms & Conditions of Sale

TERMS & CONDITIONS OF SALE

ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYERS ASSENT TO THE TERMS AND CONDITIONS PRINTED BELOW. IF BUYER OBJECTS TO ANY TERMS BELOW, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION, OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS BELOW. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

GENERAL PROVISIONS

1. Title and Delivery

All shipments of goods shall be delivered F.O.B. Seller's plant, and title and liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

Seller may deliver goods in installments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

2. Terms and Method of Payment

Where Seller has extended credit to Buyer, terms of payment shall be net ten (10) for NRE charges and net thirty (30) days from date of invoice for products. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. If the goods are delivered in installments, Buyer shall pay separately for each installment. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If Buyer delays shipments, payments are due from the date when Seller is prepared to make shipments. Goods held for Buyer are at Buyer's risk and expense.

3. Contingencies and Force Majeure

Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and deliveries among seller's customers.

4. Legal Compliance

Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgment may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses, which may be required under the applicable laws of the U.S. including the Export Administration Act and regulations promulgated thereunder.

5. Changes

Any notice or instruction from the Buyer received subsequent to Seller's acknowledgment, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

6. Limited Warranty

THE FOLLOWING IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OBLIGATION ON THE PART OF SELLER.

Seller, except as otherwise hereinafter provided, warrants the goods against faulty workmanship or the use of defective materials, and that such goods will conform to Seller's written specifications, drawings, and other descriptions for a period set forth in the schedule below. These warranties are the only warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller. Seller's warranties shall be for the following periods: eighteen (18) months from the date of shipment or twelve (12) months from the date of resale by Buyer to Buyer's customers, whichever is first to expire. Including Integrated Circuits, ASIC (Application Specific Integrated Circuits) or other Standard Product devices.

Continued use or possession of goods after expiration of the applicable warranty period stated above shall be conclusive evidence that

the warranty is fulfilled to the full satisfaction of Buyer.

Seller's warranties are herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

7. Product Application Indemnity

Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract, against Buyer and/or Seller, including Attorney's fees, expenses and costs, arising out of the application of Seller's products to Buyer's designs and/or products, or Seller's assistance in the application of Seller's products.

8. Exclusive Remedies

If the goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this contract with a detailed explanation of any alleged deficiencies, (ii) such goods are returned to Seller, F.O.B. Seller's plant, and (iii) Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If such goods are non-conforming, Seller shall reimburse Buyer for the transportation charges paid by Buyer for such goods. If Seller elects to repair or replace such goods, Seller shall have a reasonable time to make such repairs or replace such goods.

THIS IS THE SELLER'S ONLY LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9. Acceptance of Product

Acceptance shall be presumed conclusively to have occurred thirty (30) days following delivery of product to Buyer, unless Buyer has accepted the product prior to that date.

10. Patents

Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any goods manufactured and supplied by Seller to Buyer constitute direct infringement of any duly issued United States patent and Seller shall pay all damages and costs finally awarded therein against Buyer, provided that the Seller is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Seller's expense) necessary to defend or settle said suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification (s), or from a combination with, an addition to, or a modification of the goods after delivery by Seller, or from use of the goods, or any part thereof, in the practice of a process. Seller's obligations hereunder shall not apply to any infringement occurring after Buyer has received notice of such suit or proceeding alleging the infringement unless Seller has given written permission for such continuing infringement.

If any goods manufactured and supplied by Seller to Buyer shall be held to infringe any United States patent and Buyer shall be enjoined from using the same, Seller will exert its reasonable efforts, at its option and at its expense, (i) to procure for Buyer the right to use such goods free of any liability for patent infringement or (ii) to replace such goods with a non-infringing substitute otherwise complying substantially with all requirements of this contract or (iii) refund the purchase price and the transportation costs of such goods.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

11. Termination and Cancellation

Buyer may terminate this contract in whole, or from time to time, in part, upon thirty (30) days advance written notice to Seller. In such event, Buyer shall be liable for termination charges which shall include: a price adjustment based on the quantity of goods actually delivered and all cost, direct and indirect, incurred and committed for this contract; together with a reasonable allowance for prorated expenses and anticipated profits.

12. Reschedules

Buyer may reschedule Purchase Orders upon thirty (30) days advanced written notice to Seller. Reschedule must stay within the quarter in which the shipment was originally scheduled.

13. **Applicable Law and Forum**

The validity, performance and construction of this contract shall be governed by the laws of the state of Arizona and shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.

14. **U.S. Government Contracts**

If the goods to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract, and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

15. **Modification**

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER LOCATED AT SELLER'S APPROPRIATE ORDER ENTRY LOCATION.