

Terms and Conditions

1. **CUSTOMER'S TERMS AND CONDITIONS.** Electronic Diversified, Inc. (Seller) desires to provide its Customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair Seller's ability to provide such service. Accordingly, products and services furnished by Seller are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on Customer's order, Seller's performance of any contract is expressly made conditional on Customer's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing by Seller. In the absence of such agreement, commencement of performance and/or delivery shall be for Customer's convenience only and shall not be deemed or construed to be acceptance of Customer terms and conditions, or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any product or service shall be deemed acceptance of the terms and conditions stated herein. All contracts for the sale of products shall be construed under and governed by the law of the location of Seller's manufacturing plant from which the products are shipped.
2. **ORDERS.** All orders for non-catalog products not responding to a quotation issued by Seller shall be subject to acceptance by Seller only at its plant.
3. **QUOTATIONS, PRICES AND ACCEPTANCE.** All quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear on the quotation. In the case of a conflict between the terms and conditions stated herein and those appearing on quotations confirmed in writing, the latter shall control. All published prices are subject to change without notice. Unless otherwise specified in writing, all quotations are firm for, and expire, thirty (30) days after date thereof and constitute offers; provided that budgetary quotations and estimates are preliminary information only and shall neither constitute offers, nor impose any responsibility or liability upon Seller. All shipments will be billed at prices in effect on the date of acceptance of Customer's order, or as quoted in writing. Unless otherwise stated in writing by Seller, all prices quoted shall be exclusive of transportation, insurance, taxes (including, without limitations, any sales, use or similar tax, and any tax levied on or assessed to Seller after product delivery by reason of Seller's retention of title as provided herein), license fees, custom fees, duties and other charges related thereto, and Customer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto, and shall hold Seller harmless therefrom; provided that, if Seller, in its sole discretion, chooses to make any such payment, Customer shall reimburse Seller in full upon demand. Stenographic, typographical and clerical errors are subject to correction. Prices quoted are for products only and do not include technical data, proprietary rights of any kind, patent rights, qualification, environmental or other than Seller's standard tests and other than Seller's normal domestic commercial packaging unless expressly agreed to in writing by Seller. Published weights and dimensions are approximate only. Certified dimensional drawings can be obtained upon request. Manuals, programs listings, drawings or other documentations required hereunder must be referenced specifically. The failure of Seller or Customer to insist upon the performance of any of the terms or conditions of this contract or to exercise any right hereunder shall not be deemed to be a waiver of such terms, conditions or rights in the future, nor shall it be deemed to be a waiver of any other terms, conditions, or right under this contract. No terms and conditions other than those stated herein, and no agreement or understanding, in any way purporting to modify these terms or conditions, whether contained in Customer's purchase or shipping release forms, or elsewhere, shall be binding on Seller without Seller's written consent. If the conditions of a quotation which prevail over any inconsistent terms of Customer's purchase order are not acceptable to Customer, he must so notify Seller in writing at once.
4. **TERMS OF PAYMENT.** Unless credit is granted, payment is due upon delivery. All payment for products released and shipped on approved credit accounts shall be due in full thirty (30) days from date of invoice therefore. Past due balances shall be subject to a service charge of 1.5% per month (18% annually), but not more than the amounts allowed by law. Partial shipments will be billed as made and payments therefore are subject to above terms. Payment shall not be withheld for delay in delivery of required documentation unless a separate price is stated therefore, and then only to the extent of the price stated for such undeliverable documentation. Seller may cancel or delay delivery of products in the event Customer fails to make prompt payment. Title for financial security purposes shall remain with Seller until Customer has made payment in full in accordance with the terms thereof. Customer shall cooperate fully with Seller to execute such documents and to accomplish such filings and/or recordings thereof as Seller may deem necessary for the protection of Seller's interest in the products furnished.
5. **TRANSPORTATION AND RISK OF LOSS.** Transportation will normally follow Customer's shipping instructions, but Seller reserves the right to ship products freight collect and to select the means of transportation and routing when Customer's instructions are deemed unsuitable. Unless otherwise advised, Seller may insure to full value of the products or declare full value thereof to the transportation company at the time of delivery and all freight and insurance costs shall be for Customer's account. Risk of loss or damage shall pass to Customer upon delivery of the products to the transportation company at the FOB point, whether or not installation is provided by or under supervision of Seller. Confiscation or destruction or damage to products shall not release, reduce, or in any way affect the liability of Customer therefore. Notwithstanding any defect or nonconformity, or any other matter, such risk of loss or damage shall remain with Customer until the products are returned at Customer's expense to such place as Seller may designate in writing. Customer, at its expense, shall fully insure products against loss or damage until Seller has been paid in full therefore, or the products have been returned, for whatever reason, to Seller. All products must be inspected upon receipt and claims shall be filed with the transportation company when there is evidence of shipping damage, either concealed or external. As used in the clauses appearing herein or attached hereto, delivery shall occur when the product is delivered at the FOB point, which shall be the point of manufacture or such other place as Seller shall specify in writing, notwithstanding installation by or under supervision of Seller.
6. **PERFORMANCE.** Seller will make all reasonable effort to observe its dates indicated for delivery or other performance. However, Seller shall not be liable in any way because of any delay in performance hereunder due to unforeseen circumstances or to causes beyond its control, including without limitation, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion, subcontractor, supplier or Customer-caused delays, inability to obtain labor, materials or manufacturing facilities, or compliance with any law, regulation or order, whether valid or invalid, of any cognizant government body or any instrumentality thereof whether now existing or hereafter created. Performance shall be deemed suspended during and extended for such time as any such circumstances or causes delay its execution. Whenever such circumstances or causes have been remedied, Seller will make and Customer shall accept performance hereunder. In addition, Seller's inventories and current production must be allocated so as to comply with applicable Government regulations. In the absence of such regulations, Seller reserves the right, in its sole discretion, to allocate inventories and current production and substitute suitable materials, when, in its opinion, such allocation or substitution is necessary due to such circumstances or causes. No penalty clause of any kind shall be effective. As used herein, performance shall include, without limitation, fabrication, shipment, delivery, assembly, installation,





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- testing and warranty repair or replacement, as applicable.
7. **LABOR CHARGES.** Seller shall not be held liable for any labor charges other than those agreed upon in writing between the manufacturer and Customer.
 8. **TERMINATIONS.** No order may be terminated by Customer except by mutual agreement in writing. Terminations by mutual agreement are subject to the following conditions: Customer will pay, at applicable contract prices, for all products which are completely manufactured and allocable to Customer at the time of Seller's receipt of notice of termination. Customer will pay all costs, direct or indirect, which have been incurred by Seller with regard to products which have not been completely manufactured at the time of Seller's receipt of notice of termination, plus a pro rate portion of normal profit on the contract. Customer will pay a termination charge on all other products affected by the termination. Seller's normal accounting practices shall be used to determine costs and other charges. To reduce termination charges, Seller will divert completed parts, material or work-in-progress from terminated contracts to other Customers whenever, in Seller's sole discretion, it is practicable to do so.
 9. **PATENTS AND OTHER INDUSTRIAL PROPERTY RIGHTS.** Seller will hold Customer harmless, as set forth herein, in respect to any claim that the design or manufacture of any product in Seller's commercial line of products or manufactured to specifications set by Seller and furnished hereunder constitutes an infringement of any patent or other industrial rights of the United States or Canada. Seller will pay all damages and costs either awarded in a suit or paid, in Seller's sole discretion, by way of settlement, which are based on such claim of infringement, provided that Seller is notified promptly in writing of such claim or infringement and is given full authority, information and assistance in settling or defending such claim. Seller shall have no liability whatsoever hereunder with respect to any claims settled by Customer without Seller's prior written consent. Seller will, in its sole discretion and at its own expense, either procure for the Customer the right to continue using said product, replace it with a non-infringing product, or remove it and refund an equitable portion of the selling price and transportation costs thereof. This shall constitute Seller's entire liability for any claim based upon or related to any alleged infringement of any patent or other industrial property rights. Customer shall hold Seller harmless against any expense, loss, costs, or damages resulting from claimed infringements of patents, trademarks, or other industrial property rights arising out of compliance by Seller with Customer's designs, specifications or instructions. Seller disclaims liability for U.S. patents or copyright infringement arising from use or manufacture by anyone of inventions in connection with products or services sold, used, or intended for sale or use in performing contracts with the United States or related subcontracts.
 10. **WARRANTY.** Seller warrants each item sold by it to be free from defects in material and workmanship for a period of time and under such conditions as specified in Seller's warranty for the individual product, or for twelve (12) months from shipment if a specified warranty for the individual product is not applicable. Seller's sole liability under valid warranty claims is limited, at the option of the Seller, to repair or replacement of the product. Provided that Seller may, as an alternative, elect to refund an equitable portion of the purchase price of the product. This warranty is expressly in lieu of all other obligations or liabilities on the part of Seller unless such other obligations or liabilities are agreed to in writing by Seller.
 11. **WARRANTY REPLACEMENT AND ADJUSTMENT.** All claims under warranty must be made promptly after occurrence of circumstances giving rise thereto and must be received within applicable warranty period by Seller or its authorized representative. All warranty service is FOB factory and/or designated service centers. Such claims should include the product type and serial numbers, and a full description of the circumstances giving rise to the claim. Before any products are returned for repair and/or adjustment, written authorizations from Seller or its authorized representative for the return and instructions as to how and where these products should be shipped must be obtained. Any products returned to Seller for examination shall be sent prepaid via the means of transportation indicated as acceptable by Seller. Seller reserves the right to reject any warranty claim not promptly reported and any warranty claim on any item that has been altered or has been shipped by non-acceptable means of transportation. When any product is returned for examination and/or inspection, or for any other reason, Customer shall be responsible for all damage resulting from improper packing or handling, and for loss in transit, notwithstanding defect or nonconformity in the product. In all cases Seller has sole responsibility for determining the cause and nature of failure, and Seller's determination with regard thereto shall be final. If it is found that Seller's product has been returned without cause and is still serviceable, Customer will be notified and the product returned at its expense; in addition, a charge for testing and examination may, in Seller's sole discretion, be made on products returned.
 12. **FIELD ENGINEERING.** Field engineering service and service contracts may be contracted from the factory.
 13. **DAMAGES AND LIABILITY.** Seller's liability for damages shall not exceed the amount received by it for the unit of product or service furnished or to be furnished as the case may be, which is the subject of claim or dispute. In no event shall Seller be liable for incidental, consequential or special damages. Liability to third parties for bodily injury, including death, resulting from Seller's performance shall be determined in accordance with applicable law and the total liability limitation stated above shall not be construed as a limitation on Seller for damages for any such bodily injury, including death.
 14. **ACCEPTANCE.** Each product furnished by Seller shall be deemed accepted by Customer unless notice of defect or nonconformity is received within thirty (30) days of delivery thereof; provided that products for which Seller agrees in writing to provide, shall be deemed accepted by Customer upon completion by Seller of its applicable acceptance test or execution of Seller's acceptance form by Customer. Notwithstanding the foregoing, use of any such product by Customer, its agents, employees or licensees, for any purpose after delivery, shall constitute acceptance of the product by Customer.
 15. **DISPUTES.** All disputes under any contract concerning products not otherwise resolved between the Seller and Customer shall be resolved in a court of competent jurisdiction for the location of Seller's manufacturing plant from which the products are shipped, and in no other place. Provided that, in Seller's sole discretion such action may be heard in some other place designated by Seller (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Customer hereby consents to the jurisdiction of such courts and agrees to appear in any such action upon written notice thereof. No action, regardless of form, arising out of, or in any way connected with, the products or services furnished by Seller, may be brought by Customer more than one (1) year after the cause of action has occurred. If any part of the terms and conditions stated herein is held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions notwithstanding the part of parts found void or unenforceable.
 16. **LEGAL COSTS.** If suit or action is instituted by Seller to enforce payment or performance hereunder by Customer, the Seller shall be entitled to recover its actual costs incurred including the sum allowed by the court as reasonable attorney fees.
 17. **CHARGES.** Charges for tools, dies, fixtures, gauges, do not convey ownership or the right to remove them from Seller's factory. Such charges, for the use of said equipment shown on the invoice may constitute either in whole or part of the actual cost. The Seller assumes the remainder and/or the cost of maintenance. The Customer, however, may purchase such items upon request in writing and at the sole discretion of the Seller.



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