

TERMS AND CONDITIONS OF SALE

1. With respect to any products and/or services (collectively, "Products") purchased by Buyer from Seller, the terms and conditions thereof shall consist of these terms together with any additions or revisions of such terms mutually agreed to in a writing signed by Seller and Buyer ("the Parties"). 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 in a writing signed by the Parties and only with respect to those Products intended to be covered by that executed document. This Agreement constitutes the entire, integrated agreement between the Parties related to the subject matter of this Agreement and any subsequent purchases made by the Buyer from the Seller, and any and all discussions, understandings, agreements, representations, courses of dealings, customs, and usages of trade heretofore made or engaged in by the Parties with respect to the subject matter hereof are merged into this Agreement which alone fully and completely expresses the Parties' agreement. No amendments, modifications, waivers, or termination of this Agreement can be made through the Parties' course of dealings and no such change can be made except in a single writing signed by the Parties hereto. Failure by Seller to exercise any right or remedy under the Agreement 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 Agreement shall be for the benefit of the Parties and not for the benefit of any other person. Buyer may not assign this Agreement without the express written approval of Seller. Any provision of this Agreement 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 Agreement will remain in full force and effect.
2. This Agreement may not be modified or rescinded except by a writing signed by the Parties. 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 equal to Seller's costs associated with the contract, as determined by generally accepted accounting principles, plus a reasonable profit on the entire contract. Cost shall include any amount Seller must pay to its suppliers due to any termination by Seller of a purchase order or contract for Products intended for Buyer. Prices may be changed by Seller to the extent Buyer seeks earlier deliveries or excess quantity. Pricing reflects an agreement with Seller as to MOQ's. Pricing is also subject to change to the extent Buyer requests delivery over more than a six-month period.
3. Payment of the purchase price for Products sold by Seller to Buyer shall be in the amounts set forth on each invoice, and Buyer agrees to pay all charges in accordance with the amounts established in said invoices. The entire outstanding balance due to Seller on all invoices shall become due in full immediately upon default in the payment of any invoice. Buyer will pay a service charge of \$50.00 or the maximum allowed by law for each check returned by Buyer's bank.
4. Buyer shall pay the purchase price for Products within thirty (30) days from the date of invoice. In the event Buyer fails to pay the total purchase price within the 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 Agreement. Cash discounts do not apply to cases, reels, spools or transportation charges. The purchase price for the Products is ExWorks, 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 set off any amount due from Buyer to Seller, whether or not under this Agreement, 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. Unless otherwise agreed to in writing, title to any software associated with a Product shall not pass to Buyer and, strictly to the extent permissible under any license agreement related to such software, Buyer shall be granted a limited license to use the software in connection with the Product, strictly in accordance with the license agreement, and Buyer agrees to be bound by any license terms pertaining to software associated with a Product sold hereunder. Buyer agrees to defend and indemnify Seller, including paying for Seller's attorneys' fees for counsel of Seller's choosing, from any claims or lawsuits in which it is alleged that such license agreement was breached or violated by reason of the actions of Buyer.
5. In the event Buyer orders any inventory from Seller which Seller produces or procures for Buyer and such inventory is not readily saleable to other customers of Seller, Buyer agrees to be responsible and pay for all such custom or specially procured inventory, notwithstanding any defenses Buyer may have as to its failure to pay for other inventory and notwithstanding Buyer's failure to use or sell such inventory.
6. 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 at the time of payment for the Product, unless Buyer furnishes Seller with exemption certificates acceptable to taxing authorities. Such amount shall be due whether or not included on the invoice.
7. 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 the shipping or performance date requested by Buyer will only be effective if set forth in a writing signed by the Parties, 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 determined by Seller in its sole discretion.
8. Buyer shall promptly submit all claims for shortages in writing to Seller once 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. Buyer will inspect the Products upon delivery and will promptly notify Seller in writing of any defect in the Products so that Seller may place the Product manufacturers on notice of the same, otherwise such Products will be considered accepted.
9. Seller hereby transfers and assigns any and all transferable warranties made to Seller by the manufacturer of the Products and any intellectual property indemnity from the manufacturer of such Products to Buyer, and Seller makes no warranty beyond that provided through such transfer and assignment. Buyer's sole and exclusive remedy for any alleged defect, failure, inadequacy, or breach of any warranty related to Products shall be limited to those warranties and remedies provided by the manufacturers of those Products all of which are hereby assigned by the Seller to Buyer.
10. **DISCLAIMER OF WARRANTIES: THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF, AND SELLER DISCLAIMS 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.**
11. **LIMITATION ON BUYER'S RECOVERY: IN NO EVENT, EITHER FOR PRODUCTS MANUFACTURED BY SELLER OR THOSE THAT ARE NOT, SHALL BUYER BE ENTITLED TO RECOVER MORE THAN THE PRICE OF THE PRODUCTS PROVIDED HEREUNDER FROM SELLER FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS DELIVERED PURSUANT TO THIS AGREEMENT BASED ON ANY THEORY OR CAUSE OF ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR FOR PUNITIVE DAMAGES.**
12. **LIMITATION OF BUYER'S DAMAGES: IN NO EVENT, EITHER FOR PRODUCTS MANUFACTURED BY SELLER OR THOSE THAT ARE NOT, SHALL BUYER BE ENTITLED TO RECOVER ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES FROM SELLER, FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS DELIVERED PURSUANT TO THIS AGREEMENT BASED ON ANY THEORY OR CAUSE OF ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR FOR PUNITIVE DAMAGES.**
13. Seller shall not be liable for any failure to perform its obligations under the Agreement resulting directly or indirectly from, or contributed to or by acts of God, acts of Buyer, acts of terrorism, 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 Agreement other than as expressly provided in this Agreement.
14. If Buyer furnishes specifications to Seller for use in the manufacture of the Products, Buyer will indemnify and hold Seller harmless against any claim of intellectual property infringement which arises out of Seller's compliance with the specifications.
15. 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, and Buyer will indemnify and hold Seller harmless for any damages arising from such violations by Buyer.
16. Buyer will not disclose or make available to any third-party Seller's data or other confidential, non-public or proprietary information regarding Seller without Seller's prior written authorization.
17. This Agreement shall be governed, interpreted and construed according to the substantive laws of the State of Illinois, U.S.A. without regard to principles of conflicts of law thereof and shall not be governed by the Convention on the International Sale of Goods. If any dispute or controversy shall arise with respect to this Agreement, such dispute or controversy will be settled in the state or federal courts located in Chicago, Illinois, in which case the Parties hereby consent to the exclusive jurisdiction and venue of such courts, and agree that they shall not contest or challenge the jurisdiction or venue of such courts. Any action for breach of the Agreement or any covenant or warranty must be commenced within one (1) year after the cause of action accrues.