

Governing Provisions - All quotes, purchases, or releases from Seller shall be governed exclusively by these terms and conditions of sale ("Ts&Cs"). Acceptance of Buyer's purchase order is made only on the express understanding and condition that, insofar as these Ts&Cs conflict with any other purchase order, order forms, acknowledgement forms or other document issued by the Buyer which may contain terms in addition to or at variance with these Ts&Cs it is expressly understood that and agreed that such documents shall not add to nor vary these Ts&Cs. Only a written instrument duly executed by authorized representatives of the Seller and Buyer may modify this contract.

Purchase Orders - Customer shall purchase Products ("Products") by issuing a written purchase order, indicating specific Products, quantity, price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, and any other special instructions.

Purchase Order Changes and Cancellations - All requested changes to an accepted purchase order must be submitted to the Seller in writing and are subject to Seller's acceptance. In the event that such changes or additions are accepted by Seller, Seller may revise the price and dates of delivery. Shipment of ordered Products can be rescheduled once, if the rescheduling request is made more than 30 days before the original shipment date. Entire ordered quantity must be released within 12 months after receipt of the order. Products scheduled for delivery more than 45 days after the current date may be cancelled upon approval of Seller, subject to 100% bill back of all costs incurred to the time of cancellation.

Prices - Prices are subject to change without notice. All prices are exclusive of taxes, customs, duties, transportation, and insurance, which are to be borne by the Buyer.

Payment - All amounts are payable in US dollars only. Seller may require payment in advance. With Seller's approval, payment terms are net thirty (30) days from date of Seller's invoice. Invoices are to be paid in full without deduction, unless an approved credit memo is on the account at the time of payment. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate this sale or to stop Products in transit or to suspend further performance under these terms and conditions and/or other agreements with Buyer. Should Buyer's financial condition become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller prior to shipment of Products. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.

Title, Delivery and Risk of Loss - All shipments will be FCA (INCO Terms 2000) point of shipment. Title to Products and all risk of loss and damage shall pass to the Buyer upon delivery of Products to the carrier. Delivery and shipment dates are estimates only, are not guaranteed, and are determined from the date the Buyer's purchase order is accepted by the Seller. Seller's failure to ship or deliver as scheduled shall not entitle the buyer to cancel a purchase order or to damages of any kind. In no event will Buyer be liable for any premium transportation, re-procurement, or special, incidental or consequential damages (including but not limited to loss of profit) due to any failure to deliver or delay in delivery however caused.

Products - Seller reserves the right to change designs and specifications for the Products which do not affect form fit or function of the Products without prior notice to Buyer. Seller also reserves the right to discontinue the manufacture of any product. In such case, Seller agrees to use reasonable commercial efforts to assist Buyer in selecting a suitable alternative. Buyer acknowledges that certain Products offered by Seller are subject to minimum order quantities.

Warranty - Seller warrants the Products to be free from defects in materials and workmanship for a period of 6 months from the date of shipment. Seller's sole obligation for non conforming Product shall be to repair or replace such Products at a location designated by the Seller or to credit the purchase price of such Products at the Seller's sole option. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY, AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

Life Support Policy - Seller's Products are not designed, intended, authorized or warranted suitable for use in life support applications, devices or systems. Buyer agrees not to use the purchased Products for life support applications, devices or systems, and further agrees to indemnify, and hold harmless Seller and its agents from and against any and all actions, suits, proceeding, costs, expenses, damages and liabilities including attorney's fees arising out of connection with this section.

Intellectual Property Indemnity - Seller will defend any claim, suit or proceeding brought against Buyer so far as it is based on a claim that any Product supplied hereunder infringes a copyright or an existing patent (as of the effective date of this Agreement) within the United States, if notified promptly in writing of the claim and given full authority, information, and assistance for the defense. If such claim has occurred, or in Seller's opinion is likely to occur, Buyer agrees to permit Seller, at Seller's option and expense, either to procure for Buyer the right to continue using the Product or to replace or modify the same so that it becomes non infringing, or, if neither of the foregoing alternatives is reasonably available, remove the Product and refund Buyer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Product as established by Seller. Seller has no liability for any claim based upon the combination, operation, or use of any Product supplied hereunder with equipment, devices, or software not supplied by Seller, or for any claim based upon alteration or modification of any Product supplied hereunder. Buyer shall defend and hold Seller harmless against any expense, judgment or loss for alleged infringement of any patents, copyrights or other proprietary rights which result from Seller's compliance with Buyer's designs, specifications or instructions.

Export - Buyer shall obtain all licenses, permits and approvals required by any government and shall comply with all applicable laws, rules, policies and procedures of the applicable Government, and other competent authorities for the export of the Products. Buyer will indemnify and hold Seller harmless for any violation or alleged violation by Buyer of such laws, rules, policies or procedures. Buyer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data (including processes and services) received from Seller, without first obtaining any license required by the applicable Government, including without limitation, the United States Government and/or any other applicable competent authority. By accepting delivery, Buyer agrees that none of the Products or technical data supplied by Seller under this Agreement will be sold or otherwise transferred to any US-embargoed destination, any entity subject to a US denial order, or made available for use by or for, any military end-user, or in any military end-use located in or operating under the authority of any country identified in Country Group D:1 under Supplement No. 1 to Part 740 of the EAR without a US license. Buyer also certifies that none of the Products or technical data supplied by Seller under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

Confidential Information - Buyer shall hold confidential and shall not use or permit others to use any confidential information identified as such in writing or orally by Seller or information which Buyer knows or has reason to know is confidential, proprietary or trade secret information of Seller.

Limitation of Liability - IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES (INCLUDING LOST PROFITS OR REVENUES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT. ALL LIABILITY OF SELLER AND ITS SUPPLIERS SHALL BE LIMITED TO MONEY PAID TO SELLER UNDER THIS AGREEMENT.

Force Majeure - Seller shall not be liable for any delay in performance or inability to perform occasioned by any causes beyond its control or beyond the control of its suppliers, manufacturers, processors, or finishers including but not limited to fires, strikes, lockouts, labor difficulties, earthquakes, typhoons, embargoes, floods. Delays by carriers, orders, rules or regulations of any foreign and/or domestic governmental authorities, trade associations or any other agency having control over export or import, voluntary quotas, restrictions, controls, unavailability or shortage or delay of any transportation. Intervention of any such cause(s) shall give Seller the right, without liability to Buyer of any kind to terminate this contract with respect to all or any portion of the Products or services affected thereby, or upon removal of the cause, to resume deliveries in such proportions as it may determine until the entire quantity purchased hereunder has been delivered.

Assignment - Seller expressly reserves the right to assign or subcontract all or any portion of a purchase order without Buyer's consent.

Dispute Resolution - If there is any dispute arising out of or related to the contract between the parties, the parties shall first make a good faith attempt to resolve the matter through their respective management. In the event such negotiations fail, any controversy or claim arising out of or relating to the contract between the parties, or the breach thereof, shall be settled by arbitration before a single arbitrator, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The location of the arbitration shall be San Diego, California and the arbitrator shall apply the laws of the State of California, without reference to rules of conflict of laws. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall not have authority to award, punitive or exemplary damages against any party.

Severability/Waiver - In the event any provisions of these Ts&Cs become subject to revision or nullification by ruling of an appropriate court of competent jurisdiction, the remaining terms and conditions herein shall remain in full force and effect. The failure of Seller to enforce the provisions hereof shall not be construed as a waiver of such provision or affect Seller's ability to enforce or exercise such provision.