

TERMS AND CONDITIONS OF SALE

- 1. OFFERS:** Offers made and prices quoted by Electronic Products Industries Inc. d/b/a Electronic Products("EPI") are valid for 30 days from the quotation date, unless otherwise specified in writing within the quotation.
- 2. CONTROLLING TERMS:** No orders for products or services of EPI shall be binding on EPI until acknowledged in writing by an officer of EPI. These terms and conditions of sale apply to all purchase orders transmitted to EPI, they take precedence over Purchaser's additional or different terms, and they are the complete and exclusive statement of the terms of the agreement of the parties. **ISSUANCE OF A PURCHASE ORDER AND/OR ACCEPTANCE OF ITEMS BY PURCHASER SHALL IRREVOCABLY MANIFEST PURCHASER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND EPI AGREES TO FURNISH PRODUCTS AND SERVICES ONLY UPON THESE TERMS AND CONDITIONS.** EPI's failure to object to terms contained in any communication from Purchaser shall not be deemed a waiver of this provision. No waiver, alteration, or modification of any of the provisions hereof shall be binding on EPI unless made in writing and signed by an officer of EPI.
- 3. SHIPMENT, DELAYS IN PERFORMANCE:** Shipment dates are approximate. Delivery of items to a carrier at EPI's plant or other loading point shall constitute delivery to Purchaser; and title shall thereupon pass to Purchaser, and all risk of loss or damage to goods thereafter shall be borne by Purchaser. Shipment of items to Purchaser's desired location, if arranged by EPI, shall be either freight collect or freight prepaid with charges invoiced to Purchaser, unless otherwise agreed. EPI reserves the right to make partial deliveries, and all such partial deliveries may be separately invoiced and shall be paid for when due. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept later deliveries. In no event shall EPI be liable for any failure or delay in performance or delivery due to unforeseen circumstances or causes beyond its control, including, but not limited to, acts of nature, acts of government, labor difficulties, or unavailability of necessary labor, materials, manufacturing facilities, or transportation.
- 4. SHIPMENT INTO STORAGE, CANCELLATION:** If for any reason attributable to Purchaser, including, but not limited to, failure to give shipping instructions or make a due payment, EPI withholds shipping items to Purchaser, EPI may store the items, at Purchaser's risk, in a warehouse or upon EPI's premises, and in addition to its responsibilities otherwise under the order, including to make payments when due, Purchaser shall pay all costs resulting therefrom. No order may be cancelled by Purchaser, nor may shipments be deferred, unless agreed to by a separate document signed by an officer of EPI, setting forth and conditioned upon the payment to EPI of amounts as specified therein sufficient to compensate EPI for any loss incurred due to such cancellation, including any lost profit.
- 5. PAYMENT, SECURITY:** Payments shall be due in accordance with the terms stated on EPI's invoices. Any amounts not paid when due shall be subject to a late payment charge at the rate of 1 ½% per month, but not higher than permitted by law; and, in the event of any default in payment, without limitation of its rights otherwise, EPI shall be entitled to discontinue performance under any arrangement with Purchaser and to recover all costs of collection, including attorneys' fees. EPI reserves the right, at any time, to require an irrevocable letter of credit from a bank which it designates or, when, in EPI's opinion, the financial condition of Purchaser so warrants, to alter or suspend credit, refuse shipment, or cancel unfilled orders. EPI retains a security interest in each item, and in the proceeds thereof, until Purchaser has made full payment. Therefore, upon request of EPI, Purchaser shall sign any document required to perfect such security interest. Without limitation of its rights otherwise, EPI shall be entitled to all rights available to a secured party, including the right to repossess upon failure of payment or other default by Purchaser.
- 6. TAXES AND OTHER CHARGES:** Any manufacturer's tax, sales tax, use tax, value added tax, excise tax, custom, inspection or resting fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority, upon or with respect to the transactions covered hereby shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event EPI is required to pay any such tax, fee, or charge, Purchaser shall reimburse EPI therefor promptly upon notice from EPI.
- 7. INTELLECTUAL PROPERTY INDEMNITY:** EPI accepts no liability for, and Purchaser shall defend, indemnify and hold EPI harmless against any expense or loss resulting from infringement of patents, copyrights, trademarks or other intellectual property rights of others arising from EPI's compliance with Purchaser's specifications, instructions or requirements that a product be produced to perform a specific process. The sale of products by EPI does not convey any license, by implication, estoppel or otherwise under any patents of EPI or others covering said products. Subject to the foregoing, EPI, if notified promptly in writing and given authority, information and assistance for defense, shall defend any suit or proceeding brought against Purchaser, so far as based on a claim that any EPI manufactured product constitutes direct infringement of any U.S. apparatus patent, other than a software patent, of any third party. In case said product is, in such suit, held to constitute direct infringement of such apparatus patent and all use of said product by Purchaser is enjoined, EPI shall, at its election, either procure for Purchaser the right to continue using said product, replace same with a non-infringing product, modify it so it becomes a non-infringing product, or remove said product and grant a credit to Purchaser based on a five year straight-line depreciation of the original purchase price. In no event shall EPI's total liability to Purchaser under or as a result of compliance with the provisions of this paragraph exceed the aggregate sum paid by Purchaser for the allegedly infringing product. In no event shall EPI have any liability for any claim alleging infringement of a process patent or a patent covering software or covering a combination in which the product furnished by EPI is only a part. **THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OF ANY KIND.**
- 8. ACCEPTANCE OF ITEMS:** If Purchaser has any claim or complaint concerning any item including, without limitation, claimed shortages, defects, quality problems, or delivery errors, it shall notify EPI in writing within 30 days after receipt thereof, specifying the basis of its complaint. If no notice is received from Purchaser within 30 days of receipt, the items shall be deemed accepted on the date of delivery and Purchaser shall be deemed to have waived all claims and complaints, except as permitted by EPI's express warranty.
- 9. EXPRESS WARRANTY, REPAIRS, RETURNS:** EPI warrants to Purchaser that items provided by EPI shall conform to its published specifications and shall be free from defects in material and workmanship when used under normal operating conditions and that all service provided by EPI shall be performed in a workmanlike manner. This warranty shall apply for such period of time and under such conditions as are specified in EPI's standard warranty for each item. If not otherwise specified, complete systems shall carry a warranty for parts which shall apply for a period of one year from shipment by EPI. The warranty for spare parts shall apply for a period of 90 days from shipment by EPI. The warranty for service shall apply for a period of 90 days from performance of the service.
The warranty granted hereunder, however, does not include parts which EPI considers as consumables under normal operating conditions; and, if a system includes major subsystems or components not manufactured by EPI, EPI's warranty with respect to such shall be limited to the warranty extended to EPI by the supplier thereof. In no event shall EPI's warranty apply to defects caused in whole or in part by external causes, such as, but not limited to, catastrophe, power failure or fluctuations, environmental extremes, or improper or unconventional use, maintenance, or application.
If an item or part thereof proves defective and does not meet its warranty, such item or part shall be repaired or replaced, at EPI's option. EPI's obligation to repair or replace shall be conditioned upon EPI's receiving written notice of any alleged defect during the applicable warranty period and within 10 days after its discovery and, at EPI's option, return of such item or part to EPI's factory in Billerica, Massachusetts or such other facility as EPI may designate.
All items returned to EPI must be accompanied by a EPI Materials Return Authorization signed by an authorized representative of EPI. Unless specifically noted otherwise in writing, return of items by Purchaser shall constitute Purchaser's authorization for EPI to repair such and to invoice Purchaser for its standard charges if the item is not covered by the terms of the warranty. Purchaser shall be responsible for all freight and customs charges and all risk of loss or damage during transit, both to and from EPI's facility, whether or not the item meets warranty requirements.
THE FOREGOING WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. EPI SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 10. LIMITATION OF LIABILITY:** IN NO EVENT SHALL EPI BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES, NOR SHALL ITS LIABILITY EXCEED THE PURCHASE PRICE OF THE ITEM WHICH GAVE RISE TO THE CLAIM, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE.
- 11. INDEMNIFICATION:** Purchaser agrees to defend, indemnify and hold EPI harmless from and against all claims of any kind, whether based on contract, tort or otherwise, for any losses, expenses, damages and liabilities (special, indirect, incidental, consequential or contingent) which may arise out of the use of items by Purchaser or others, or otherwise be based upon events occurring subsequent to shipment by EPI, except those caused solely by defects in materials or workmanship or by the sole negligence of EPI, which shall be governed by the provisions limiting liability set forth in Paragraph 10 or otherwise herein.
- 12. ASSIGNMENT, WAIVER, EXPORT, LAW:** Purchaser shall not assign any of its rights or obligations without EPI's prior written consent. EPI's failure to exercise any of its rights shall not constitute a waiver or forfeiture of such rights, and specific statement of its rights herein shall not limit its rights otherwise available. Purchaser shall not take any action which might violate any governmental regulation pertaining to import/export, and any violation of this covenant shall be subject to its indemnification responsibilities set forth in Paragraph 11 above.
Disputes relating to transactions between Purchaser and EPI shall be governed by and determined in accordance with the laws of The Commonwealth of Massachusetts, and the courts of such state shall have jurisdiction. Any action relating to transactions covered by these terms and conditions, other than a claim for non-payment, must be commenced within one year after the cause of action has occurred.