

DSPM Terms and Conditions

Acceptance

The terms of sale contained herein apply to all sales transactions including Quotations and Purchase Orders entered into by Seller directly with the Buyer for standard product. Custom product sales may be subject to additional terms and conditions. This acceptance is conditional upon Buyer's assent to the terms and conditions set out herein in lieu of those in Buyer's purchase orders. Modifications or additions to these terms of sale will be recognized only if accepted in writing by an officer of the Seller. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions contained herein.

Prices

Quotations automatically expire 30 days from the date issued and are subject to withdrawal or extension by notice within that period. Seller's published prices are subject to change without notice. New pricing will not be applied to existing orders accepted by Seller. Prices quoted are for products only and do not include any other charges unless specifically covered in writing by Seller. Any discrepancies relating to price must be called to Seller's attention for resolution within 30 days of the billing date.

Taxes

Unless otherwise agreed upon in writing or required by law, all prices will be quoted and billed exclusive of federal, state and local excise sales and similar taxes. Such taxes, when applicable shall appear as additional terms on the invoice. If exemption from such taxes is claimed, buyer must provide, or have on file with Seller, a certificate of exemption at the time the Purchase Order is submitted to Seller.

Orders Acceptance

Buyer's Purchase Orders must be in writing and approved by an authorized representative of the Buyer. Seller shall determine order acceptance at its discretion, and may impose restrictions for quantity requirements in regard to total order value and product packaging minimums. Seller can also restrict time frames for scheduled deliveries and change order activity. Terms of acceptance will be mutually understood by both parties, and authorized in writing by Seller at the Buyer's request.

Terms of Payment

The Seller reserves the right to require payment in advance or C.O.D. and otherwise modify credit terms. Unless otherwise agreed, partial shipments can be made and payment shall become due in accordance with the designated terms upon submission of invoices. Each shipment shall be invoiced separately and Buyer shall pay for each shipment as invoiced. If shipments are delayed by Buyer without Seller's prior written consent, payments shall become due on the date when Seller is prepared to make shipment. Products held for the Buyer by the Seller shall be at the risk and expense of the Buyer. Seller reserves the right to add a monthly service charge as allowed by law.

Title and Delivery

Unless otherwise instructed in writing, Seller shall ship by the methods it deems most advantageous. Transportation shall be collect, or if prepaid, will be subsequently billed to the Buyer. Title shall pass to the Buyer, and Seller's liability as to delivery shall cease on delivery of products to carrier at Seller's facility, regardless of any provisions for payment of freight or insurance or the form of shipping documents. Risk of loss or damage in transit shall rest with the Buyer. All claims for loss or damage will be filed with the carrier. Claims against Seller for shortages occurring before delivery to carrier shall be waived unless made within thirty (30) days after delivery of shipment to the Buyer.

Contingencies

All shipping dates and quantities are approximate. Seller shall use reasonable efforts to fill all orders according to the agreed upon schedule and quantity. Seller shall not be responsible for any failure to perform resulting from unforeseen circumstances or causes beyond Seller's reasonable control. Such causes include, but are not limited to; strikes, floods, fires, labor disputes, accidents, inability to maintain materials or supplies, excessive demand for products over the available supply, custom duties or surcharges, and interruption for any reason in the manufacture of Seller's products by Seller's suppliers, any act of God, or the action of any government. In the event of any delay caused by such a contingency, the date of delivery shall, at the request of the Seller be deferred for period equal to the period of delay.

Patents

Buyer shall indemnify, defend and hold Seller harmless against all expenses, damages, costs, or losses resulting from any suit or proceeding brought for infringement of copyright, patent, trademarks, or other intellectual property rights or for unfair competition arising from compliance with Buyer's design specifications or instructions. With respect to products manufactured solely to Seller's design and specifications, Seller shall defend any suit or proceeding brought against Buyer so far as based on a claim that any such products of any parts thereof furnished hereunder constitute an infringement of any United States patent or United States mask work rights, if notified promptly of such claim in writing and given authority, information and assistance in the defense of same, and Seller shall pay all damages and costs awarded therein against Buyer. Seller assumes no liability, consequential or otherwise for, and Buyer agrees to hold Seller harmless against infringement of patent claims covering completed equipment or any assembly, circuit, combination, method or process in which any products may be used. In no event shall Seller's total liability to Buyer under or as a result of compliance with provisions of this paragraph exceed the aggregate sum paid to Seller by Buyer for the purchase of allegedly infringing products or parts. The foregoing states the entire warranty by Seller and the exclusive remedy of the Buyer with respect to any alleged copyright, patent or other intellectual property right infringement by such products or parts. No costs or expenses under this paragraph shall in any event be incurred for the account of the Seller without its prior written consent. Sale of product or any part thereof does not convey to Buyer any license, express or by implication, estoppels or otherwise, under any patent claim with respect to which Seller can grant licenses covering complicated equipment, or any assembly, circuit, combination, method or process in which any such products are used as components (notwithstanding) the fact that such products may have been designed for use in or may only be useful in any

such patented equipment, assembly circuit, combination, method or process, and that such products may have been purchased and sold for such use). Seller expressly reserves all rights under such patent or patent claim.

Warranty and Sole Remedy

For the applicable warranty period specified below, Seller warrants that the products to be delivered hereunder will be free from defects in materials and workmanship under normal use and service. The obligations of the Seller under this warranty are limited to replacing, repairing or giving credit for, at its option, any of said products which shall, within the warranty period be returned as provided herein to the Seller, transportation charges prepaid and which are, after examination, disclosed to the satisfaction of the Seller to be thus defective. Buyer acknowledges and agrees that the provisions of this warranty constitute the sole and exclusive remedy available to it with regard to said defective products. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating to the products other than as specifically provided herein. The warranty provided herein is subject to the following conditions:

- A. If products become defective during the warranty period, Buyer shall notify Seller promptly in writing of any such claims and provide information pertinent to delivery dates of the product and/or date code information.
- B. If Seller advises Buyer to return the product for repair or replacement, Buyer will follow Seller's Material Return Authorization procedures.
- C. If product alleged by Buyer to be defective or returned to Seller for repair as provided in this section is either (i) not under warranty, or (ii) determined not to be defective, or (iii) defective due to any cause not covered under the warranty provided herein, Buyer agrees to reimburse Seller for all reasonable expenses incurred in traveling and/or shipping, handling, and inspection of such product.
- D. Products will be accepted by Seller for warranty claim verification only when returned by Buyer in a condition which allows for suitable testing by Seller.
- E. Seller shall reimburse Buyer for shipping charges to the extent of the percent of the total return that are found by Seller to be defective as specified herein. Reimbursement will be in the form of a credit adjustment to Buyer's account unless otherwise agreed upon.
- F. In no event shall Seller be liable for any defective products if examination discloses that the defective condition of such products was caused by misuse, abuse or improper installation, application, maintenance or repair, assembly by other than Seller, alteration, accident or negligence in use, storage, transportation or handling outside of specified environmental conditions.
- G. Seller assumes no risk or liability for the suitability or unsuitability or results of

its products, used in combination with any electrical or electronic components, circuits, systems, assemblies, or any other material substances, or environments.

- H. Any returned products electrically or mechanically destroyed by Buyer or third parties will not be covered under this warranty, and will not be returned to Buyer, but will be scrapped by Seller.
- I. This warranty shall exist for a period of twelve (12) months after the date of shipment from the Seller and is considered null and void if components or subassemblies other than those supplied or approved by Seller are used in the assembly of Seller's products, or if Seller's product is modified in any way without written authorization of Seller.
- J. Developmental products of Seller are warranted to be free from defects in materials and workmanship and to meet the applicable specifications only at the time of receipt of Buyer and for no longer period of time. All accepted deliveries are deemed to be free from defects as of the time of delivery.
- K. Product sold but not manufactured by the Seller will be warranted as to defects in material and workmanship consistent with the warranty policy of the original manufacturer of the product. The Seller's only obligation shall be to assign Buyer, to the extent possible, whatever warranty the Seller receives from said manufacturer. In no event shall the Seller be liable for loss, damage or expense directly or indirectly arising from the use of the units or from any other cause, except as expressly stated in this warranty. THERE ARE NO WARRANTIES, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. THE SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OF THE GOODS OR OF THE FITNESS OF THE GOODS FOR ANY INTENDED PURPOSE. The Seller is not liable for, and the Buyer waives any right of action it has or may have against the Seller for any consequential or special damages arising out of any breach of warranty and for any damages the Buyer may claim for damage to any property or injury or death to any person arising out of its purchase or the use, operation, or maintenance of the product. The Seller will not be liable for any labor subcontracted or performed by the Buyer for preparation of item under warranty for return to the Seller's factory or for preparation work for field repair or replacement. Invoicing of the Seller for labor either performed or subcontracted by the Buyer will not be considered as a liability by the Seller. The Seller's obligations under this warranty are conditioned upon timely receipt of all payments in strict accordance with payment terms, time being of the essence in this regard. During the time while the Seller has not received any amount overdue, the Seller shall have no obligation under this warranty. The expiration date of the warranty shall not be extended upon payment of the overdue amount.

Product Discontinuance

Seller will give as much notification as possible in the event of discontinuing product, however, Seller reserves the right to discontinue production of any product at any time without notice except for that quantity of product for which Seller has received and acknowledged a Purchase Order from Buyer and has scheduled such product for shipment within six (6) months of the date of such acknowledgement.

Cancellation of Buyer

Orders for standard product may be cancelled on sixty (60) days prior to the scheduled ship date by written notice to Seller. Orders for products which are not listed in Seller's current catalogue (including but not limited to, semi-custom application specific products, or other semi-custom product(s) which have special markings, or which have received special testing or which are specially programmed for Buyer) may not be cancelled or returned except under the provisions of a prior written agreement between Seller and Buyer which sets forth the cancellation charges to be paid by Buyer in the vent of such cancellation. If such an agreement is not in place, the charges shall be 100%. Any money paid in advance is refundable at DSPM discretion.

Property Rights

The design, development or manufacture by Seller of a product for Buyer shall not be deemed to produce a work made for hire and shall not give to Buyer any copyright interest in the product or any interest in all or any portion of the mask works relating to the product. All such rights remain with the property of the Seller including models, drawings, composites, patterns, dies molds, masks and any other tools made for or obtained for furnishing the products hereunder.

Special, Incidental, Consequential, or Indirect Damages

INDEPENDENTLY OF ANY OTHER LIMITATION HEREOF AND REGARDLESS OF WHETHER THE PURPOSE OF SUCH LIMITATION IS SERVED, IT IS AGREED THAT IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES.

Limitation of Actions

No action against Seller for breach hereof shall be commenced more than one (1) year after the accrual of the cause of action.

Assignment

The Buyer shall not assign this order or any interest therein or any rights there under without the prior written consent of Seller.

Local Currency

Any order placed hereunder is, and payment for such order will be in U.S. Dollars.

Confidential Information

Seller shall have no obligation to hold any information received from Buyer hereunder in confidence unless such information is covered by a separate negotiated Non-Disclosure Agreement, which is reduced to writing and signed by both parties.

Governing Law

SEVERABILITY. These terms and conditions of sale shall be governed by the laws of the state of California. Any provisions hereof which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdictions, be ineffective to the extent of such prohibition or unenforceable without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. Buyer hereby consents to the exercise of jurisdiction over it by any state or federal court within the State of California.

Arbitration

If a disagreement or controversy of any kind arises between the Buyer and Seller, both parties shall meet to attempt to resolve such disagreement. If the disagreement cannot be resolved by the parties, an informal binding arbitration shall be held. The rules of the informal arbitration shall be agreed upon by the parties prior to the arbitration. To the extent that Buyer and Seller cannot agree on the rules of the arbitration, the rules and procedures of the American Arbitration Association shall apply. As a minimum set of rules, the parties agree as follows:

- A. The arbitration shall be held by a single arbitrator mutually acceptable to both parties. If the parties cannot agree on a single arbitrator, each party shall identify one independent individual who shall meet to appoint a single arbitrator.
- B. The decision of the arbitrator shall be considered as a final and binding resolution of the disagreement which may be entered as a judgment by any court of competent jurisdiction.
- C. The arbitration shall be held in Los Angeles County, California.
- D. Neither party shall sue the other except for enforcement of the arbitrator's decision. All disagreements or controversies of any kind whether claimed in tort, contract or otherwise, either concerning this agreement or any other matter whatsoever, shall be arbitrated according to the provisions of this paragraph and shall be brought within one (1) year after the accrual of the disagreement or controversy.

Modifications

No addition to or deletion from, nor any modifications of these terms and conditions of sale shall be binding upon the Seller unless acknowledged and accepted in writing by an officer of the Seller. Any change made by Seller will be deemed accepted by Buyer unless within ten (10) days from notice of such change. Buyer notifies Seller of Buyer's exception to such change. A waiver by Seller of any default or of any of the terms and conditions of sales shall not be deemed to be continuing waiver of any other default or of any other of these terms and conditions of sale, but shall apply solely to the instance to which the waiver is directed.

Terms & Conditions of Sale Subject to change without notice effective date 12-12-2008
DSPM Copyright ©
079-0001-01