

1. **ACCEPTANCE:** Unless and until a formal written A person authorized by the Seller signs acknowledgement, no order will become effective as a valid contract binding upon the Seller. Any provisions or conditions of Buyer's order, which are in anyway inconsistent with, or in addition to, these Terms and Conditions (except additional provisions specifying quantity and shipping or billing instructions) shall not be applicable or binding upon Seller.

2. **CREDIT:** First time purchasers may be required to provide credit information and/or be subject to a credit history check. International orders require a confirmed and irrevocable "Letter of Credit" on a US bank payable at sight.

3. **PRICE:** Seller reserves the right to change or withdraw prices for the products it offers for sale without prior notice, subject to validity conditions set forth in quotations and/or contracts. ECOs and Design changes are billable for time and material. All currency is US dollars.

4. **TAXES:** If Buyer claims tax exemption, it shall provide Seller with a tax exemption certificate acceptable to the authorities imposing the same. Delaire does not collect state sales tax. If Buyer is required to pay sales tax, it is the Buyer's responsibility to pay that tax directly to its imposing state.

5. **PAYMENT:** Unless otherwise specified herein, subject to approval by Seller of amount and Terms, buyer shall make final payment of the purchase price according to established terms. Terms are payable from ship date. If Buyer delays shipment, payments are to be made as though shipment has been made as specified. Overdue payments will carry 18% per annum interest charges, or the legal maximum rate, whichever is lower. Buyer shall pay Seller's collection or litigation expenses, including attorney fees. If, in the judgment of Seller, the financial condition of buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may, upon ten (10) days notice, require full or partial payment in advance, regardless of the payment terms originally specified. In the event of bankruptcy or insolvency of Buyer, Seller may cancel any order then outstanding and receive reimbursement for its cancellation charges.

PAYMENT OF SELLER'S INVOICES BY PURCHASER SHALL NOT BE DELAYED, OR CONTINGENT UPON, APPROVAL OR PAYMENT BY PURCHASER'S CUSTOMER OR ANY OTHER THIRD PARTY.

Each shipment shall be considered a separate and independent transaction and payment therefore made accordingly. Seller reserves the right to ship its order and make collection by sight draft, with the Bill of Lading attached.

6. **MANUFACTURED PARTS WARRANTY, REMEDY AND RETURNS:** Contract discrepancies (quantity or part number) and obvious physical defect or damage must be reported by Buyer within ten (10) days of receipt of goods. Parts cannot be returned without Delaire RMA and must be returned within thirty (30) days of receipt of goods.

Seller warrants manufactured parts for a period of twelve (12) months from date of shipment. Notice of defects shall be given to Seller in writing upon discovery. So long as such notice is within the Warranty Period (12 months) and parts are returned with RMA within thirty (30) days, Seller will promptly correct defects by repair or replacement at its option without charge.

SPECIFICALLY EXCLUDED FROM THE TERMS OF THIS WARRANTY ARE DEFECTS OR NON-CONFORMANCE CAUSED BY OR RESULTING FROM IMPROPER APPLICATION, OPERATION, MISUSE OR UNAUTHORIZED REPAIR, MAINTENANCE OR STORAGE OF THE PRODUCT. ALSO EXCLUDED ARE ITEMS OF CHARACTERISTICALLY INDETERMINATE LIFE, SUCH AS BULBS, FUSES, ETC.

THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING ITEMS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).

Seller shall not have any liability of any kind under this contract unless Buyer gives Seller notice of its claim immediately upon discovery and the notice is within the Warranty Period. IN NO EVENT SHALL THE STATUTE OF LIMITATIONS EXCEED ONE YEAR FROM THE DATE OF DELIVERY.

IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE COST OF THE REPAIR OR REPLACEMENT OF SUCH DEFECTIVE ITEM AND UNDER NO CIRCUMSTANCES SHALL SELLER BE

acceptance upon a printed Order LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES, HOWSOEVER CAUSED AND WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE (INCLUDING LATE DELIVERY OR LATE PERFORMANCE).

SELLER'S OBLIGATION TO REPAIR OR REPLACE PRODUCT (OR PERFORM SERVICES AGAIN) IN ACCORDANCE WITH WARRANTY SHALL BE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY OR FOR NEGLIGENCE. IF SELLER FAILS TO REPAIR OR REPLACE (OR PERFORM SERVICES AGAIN) AS FORESAID, SELLER'S ENTIRE LIABILITY TO BUYER SHALL NOT EXCEED THE REPAIR OR REPLACEMENT VALUE, WHICHEVER IS LOWER, OF THE DEFECTIVE ITEM OR SERVICE.

7. **DISTRIBUTED PARTS WARRANTY, REMEDY AND RETURNS:** Claims for distributed parts must be reported by Buyer within ten (10) days of receipt of goods. Parts must be returned with Delaire USA RMA within thirty (30) days from receipt of goods. A restocking fee of 30% will be charged for all distribution products returned with authorization if Seller deems product not defective.

Distributed materials and products are provided "as is" without any express or implied warranty of any kind, including warranties of merchantability, non-infringement of intellectual property, or fitness for any particular purpose. In no event shall Delaire USA, Inc. or its suppliers be liable for any damages whatsoever (including without limitation, damages for loss of profits, business interruption, or loss of information) arising out of the use of or inability to use the materials or products, even if Delaire USA, Inc. has been notified of the possibility of such damages.

8. **INSPECTION:** Seller reserves the right for controlled access to its facilities. If access is granted, it shall be in accordance with Seller's regulations for source inspectors and shall be limited to surveillance of acceptance testing of end items in non-proprietary areas after their assignment to Buyer's order or contract.

Unless otherwise stated in the contract, Delaire USA, Inc. will perform acceptance testing at its facilities using Delaire USA, Inc. standard test procedures. Buyer may witness acceptance tests on a non-interference basis.

9. **PACKING AND SHIPPING:** Prices are quoted exclusive of shipping, handling and credit card fees (if applicable). Unless otherwise specified, product shall be shipped in standard commercial packaging. When special or export packaging is required or requested, the cost of the special packaging will be added to the invoice. Unless otherwise stated, the FOB point is 1913 Atlantic Avenue, Manasquan, NJ 08736.

10. **RESPONSIBILITY AND TITLE:** Buyer assumes all responsibility for and risk of loss of, or damage to, the product during shipment and upon delivery at Seller's shipping point, or FOB point specified in the contract, notwithstanding the fact that Seller may have selected the carrier. Title to and right of possession of the product remains with Seller until payment of the purchase price in full. If payment is delayed, Buyer, if requested by Seller, shall execute and deliver to Seller a security agreement or other documents sufficient to enable Seller to comply with applicable laws.

Buyer hereby authorizes Seller, or its assignee where permitted by applicable law, to sign and file financing statement in order to protect the security interest of Seller hereunder. If Buyer causes a delay in contract completion, Buyer shall pay Seller's usual storage charges and the contract prices thirty (30) days after receipt of Seller's notice that the items sold are ready for shipment. Risk of loss shall pass to Buyer as of the date Seller receives Buyer's postponement request.

11. **EXPORT CONTROL:** The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

12. **CONTINGENCIES (FORCE MAJEURE):** Seller's obligations hereunder are subject to delays incident to: labor difficulties, casualties and accidents, acts of the elements, acts of the public enemy, transportation difficulties, governmental regulations, and any other causes of delay and/or shipment

or delivery of Goods beyond Seller's control. Sales and shipments to be made are subject to Seller's ability to obtain equipment, materials or qualified labor and Seller may apply or prorate shipment of its products to or among its customer as in its judgment is reasonable in the circumstances. Seller shall give Buyer notice of delays, non-delivery or allocation pertinent to Buyer's order. In no event shall Seller be responsible for failure to perform due to unforeseen circumstances, or to causes beyond its control.

13. **CANCELLATION AND/OR RESCHEDULING OF MANUFACTURED GOODS:** Cancellations and/or rescheduling of shipments will be accepted given adequate advance notification only with the specific written approval of the Seller and shall be subject to cancellation/rescheduling charges acceptable to Seller. Required notification period and charges may vary according to the type of class of product.

14. **SPECIFICATIONS:** If the product performance or utility is not materially and adversely affected, or contract stipulations violated, Seller may modify items sold or their specifications and substitute products of another design. Buyer requested contract changes require Seller's prior written consent and changes will result in fees and/or extension of performance time.

15. **PATENT INDEMNITY:** The preceding agreements by Seller shall not apply to any product or any part thereof manufactured to Buyer's designs, nor to any infringement relating to the use of said product or part in combination with other products not furnished by Seller. Seller disclaims any liability for patent infringement.

16. **SALE CONVEYS NO LICENSE:** The sale of products covered by this order does not convey any license, expressly or by implication, estoppel or otherwise, under any patent covering any product, assembly, system, circuit, combination, method or process in which such products may be used, notwithstanding the fact that such products may have been designed for use in, or may in any way be useful in such patented equipment assembly, system, circuit, combination, method or process or may have been purchased and sold for such use. Seller expressly reserves all its rights under such patents.

17. **ASSIGNMENT:** Buyer shall not assign any interest or rights in this contract without prior written consent of the Seller.

18. **GOVERNING LAW:** This contract shall be construed in accordance with the laws of the State of New Jersey, a Uniform Commercial Code State.

19. **ENTIRE CONTRACT:** These Terms and Conditions of Sale and Seller's written quotation constitute the entire contract. This contract represents the entire agreement between parties and shall be incorporated into any order document from Buyer. No amendment shall bind Seller unless in writing and signed by an authorized Seller representative.

20. **HEADINGS:** The headings contained in these Terms and Conditions of Sale are for convenience of reference only and are not intended to have any substantive significance in interpreting this document.

21. **BINDING AGREEMENT:** By executing these Terms and Conditions of Sale, Buyer acknowledges that it is entering into a Binding Agreement and that it has read and understands all provisions of these Terms and conditions of Sale. Buyer further acknowledges that it has had the opportunity to have counsel of its own choosing review these Terms and Conditions of Sale and by executing these Terms and Conditions of Sale, Buyer knowingly waives any rights it may otherwise have under law. Buyer further acknowledges that its authorized officer or agent has executed these Terms and Conditions of Sale on behalf of Buyer and that these Terms and Conditions of Sale have been executed upon Buyer's own free volition. A Purchase Order from the Buyer constitutes execution of these Terms and Conditions.

22. **ACCURACY/COMPLETENESS:** Delaire further does not warrant the accuracy or completeness of the information, text, graphics, links, or other items contained within these materials. Delaire may make changes to these materials or products at any time without notice. Delaire shall not be responsible to update the materials and reserves the right to update this policy as needed.