

Densitron Corporation Terms and Conditions

These Terms and Conditions of Sale apply to all quotations ("Price Quotations") made by Densitron Corporation ("Company") to its proposed customers ("Customers") and all purchase orders forwarded by Customers in connection with the purchase of goods, materials or services delivered or supplied by Company ("Goods").

I. PRICE QUOTATION

THE PRICE QUOTATION IS INTENDED FOR DISCUSSION PURPOSES ONLY. IT IS NOT AN AGREEMENT, A MEMORANDUM OF AN AGREEMENT OR AN OFFER TO ENTER INTO AN AGREEMENT ON THE TERMS AND CONDITIONS STATED IN IT. NEITHER THE COMPANY NOR CUSTOMER IS IN ANY WAY OBLIGATED OR LIABLE TO THE OTHER UNLESS AND UNTIL A FORMAL AGREEMENT, AS OUTLINED BELOW, IS EXECUTED BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF EACH OF THE PARTIES.

II. CUSTOMER'S PURCHASE ORDER

The Customer's Purchase Order forwarded to the Company shall constitute Customer's offer to enter into an agreement with the Company ("Purchase Order")

III. ACCEPTANCE

- A. Customer's Purchase Order is subject to and shall not be binding upon the Company until the Company has accepted the Purchase Order. If and to the extent any of these Terms and Conditions herein differ from any of terms or provisions of the Purchase Order, these Terms and Conditions shall prevail, and Company's acceptance of the Purchase Order is conditioned upon Customer's assent to the application of these Terms and Conditions in lieu of any contradictory provisions in the Purchase Order. A contract ("Contract") will not be formed between the parties until the Company, in its sole discretion, approves Customer's credit and one of the following apply: (1) in the situation where the terms of Customer's Purchase Order do not vary from these Terms and Conditions, the Company accepts Customer's Purchase Order by way of the Company's Acknowledgement (Form 1093) (the "Acknowledgement"); or (2) in the situation where the terms of Customer's Purchase Order vary from these Terms and Conditions, Customer separately accepts the Company's Terms and Conditions. (The Company reserves the right to accept, in its sole discretion, some or all of Customer's proposed terms even if Customer's terms differ from the Company's Terms and Conditions); or (3) the Company commences work pursuant to the Customer's Purchase Order. The Contract constitutes the entire agreement between Company and Customer with respect to the purchase and sale of the Goods, and supersedes any and all prior communications or agreements, whether written or oral, with respect thereto, including, without limitation, any statements made or implied by any agent or representative of Company. The Contract is intended as the final expression of agreement between the parties, and parol or extrinsic evidence is inadmissible to explain, vary or contradict the express terms of this contract. No course of prior dealings or

course of performance between the parties shall be recognized to vary or modify this contract.

- B. Acceptance by Company shall occur upon the earlier of (i) Company's commencement of work pursuant to the Purchase Order or (ii) Company's written acceptance of the Purchase Order by executing the Acknowledgment accompanying these Terms and Conditions. Except as otherwise provided herein, upon acceptance by Company, the Contract shall be firm and non-cancelable/non returnable (NC/NR). Any subsequent modifications to the terms or conditions thereof requested by Customer must be in writing and accepted and signed by Company, at Company's sole discretion, and in the absence thereof, the Goods shall be delivered, rendered and accepted upon the price, terms and conditions, and shall conform to all specifications as originally set forth in the Contract.

II. PRICE

- A. Unless specifically restricted, the price or prices set forth in the Contract are subject to increase based on Company's pricing in effect at the time of shipment. Prices, quotation, specifications and other terms and statements appearing in Company's catalogs and advertisements or otherwise made by Company are subject to change without notice.
- B. Unless otherwise specifically provided in writing, the prices quoted are based upon manufacture of the quantity and types of Goods originally specified and are subject to revision when instructions or changes in production, quantity, scheduled shipment or engineering are caused or requested by Customer.
- C. Unless otherwise specified in the Contract, invoicing will be generated on the day of product shipment from Company. Payment due date is calculated from the ship date indicated on the Company's invoice. Standard payment terms are net 30 calendar days. Company does not offer discount on early or on-time payment.

III. DELIVERY, TRANSPORTATION & RISK OF LOSS

- A. The estimated delivery date indicated in the Acknowledgment is based on Company's best estimate of the time the Goods will be shipped from Company's factory, and Company assumes no liability for any loss or consequential damage due to failure to ship by such estimated date. Company will not be responsible for any failure to deliver Goods hereunder resulting from unforeseen circumstance or causes beyond its reasonable control including, without limitation, acts of God, embargoes, war, acts of civil or military authorities, acts of terrorism, accidents, fire, flood, strikes or shortages of materials, labor, fuel or transportation facilities, and Company may defer delivery of Goods hereunder for a period coextensive with the period of delay caused by any of the foregoing. In the event of shortages, Company may allocate production among its customers. Unless specifically restricted, Company reserves the right to make deliveries in installments. Partial shipments will be billed as and when shipped.
- B. For scheduled orders, the minimum ship increment will be \$500.00, unless otherwise stated in writing by Company.

- C. Unless otherwise specified in the Contract, delivery of the Goods will be F.O.B. point of shipment from Company, and "Delivery" shall occur, and title and risk of loss for whatever reason shall pass to the Customer upon pickup of the Goods by carrier. All costs of transportation and insurance (including, without limitation, the cost of any special packing, loading or bracing, and return transportation costs incurred for warranty returns) shall be borne by Customer. Shipment will be made by the method specified by Customer if reasonably practicable. If no shipping instructions are specified, Company will select the appropriate transportation method and carrier in its sole discretion. Customer will file any claims for loss or damage occurring from and after Delivery of the Goods to the carrier directly with the transportation carrier.

IV. INSPECTION/WARRANTY/RETURNS

- A. Customer, at its sole expense, shall inspect all Goods, promptly upon receipt and accept all Goods that substantially conform to the specifications or catalog. All claims for any alleged defect in or failure of the Goods or Company's performance to conform to the Contract, capable of discovery upon reasonable inspection, must be set forth in a written rejection notice detailing the alleged non-conformity, which written notice must be received by Company within ten (10) calendar days of Customer's receipt of the Goods. Failure to provide such written notice within such period shall constitute a waiver of any such claim and an irrevocable acceptance of the Goods by Customer.
- B. Subject to the exceptions and conditions set forth below, Company warrants to Customer that the Goods will be free from defects in material and workmanship for a period of one year from the date of Delivery to Customer. The foregoing warranty is subject to each of the following exceptions and conditions:
 - 1. Customer must promptly notify Company of any alleged defect in a written notice detailing the alleged defect.
 - 2. The warranty shall not apply to any claimed defect that was capable of discovery upon reasonable inspection and deemed to be waived under Paragraph IV.A above, or to any Goods that have been (a) subject to misuse, abnormal service or handling, (b) altered or modified in design or construction, or (c) repaired or serviced by any person other than Company's authorized service personnel.
 - 3. The Goods are warranted solely and exclusively as set forth herein, and such warranty is in lieu of any other warranty, expressed or implied, statutory or otherwise. ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE AND FITNESS FOR A PARTICULAR PURPOSE, ARE SPECIFICALLY DISCLAIMED.
 - 4. The warranty shall not apply to, and Company expressly disclaims any liability to, Customer, its representative agents, employees, or users of the Goods, or to any other person for any special, incidental or consequential damages of any kind arising out of or in connection with

the manufacture, sale, repair, replacement, or use of any of the Goods, and Customer assumes any and all liability for loss or damage arising from or in connection with the use or misuse of the Goods by Customer, its agents, employees, representatives, or others. Notwithstanding any other provision hereof, in no event shall Company's liability to Customer under the Contract, whether for breach of contract, warranty or otherwise, exceed the purchase price under the Contract, less the purchase price of Goods delivered and accepted by Customer under the Contract.

- C. Any Goods properly rejected under paragraph A above, or as to which notice of an alleged breach has been provided under paragraph B.1. above, may be returned to Company, freight prepaid, only upon Customer's receipt of Company's written return authorization and shipping instructions. Freight paid by Customer to return Goods will be reimbursed by Company when and if returned Goods are deemed under warranty and non-conforming. Freight reimbursement shall not exceed UPS-Ground rates for domestic (within US continent) and standard Air Freight for international (outside the US) unless pre-authorized by Company. Additionally, for international returns, a copy of its original commercial invoice and packing slip must be accompanied with the return Goods. The Company RMA number shall clearly state on the Air-Way-Bill. **No deduction or credit with respect to any rejected or returned Goods shall be provided until Customer has received Company's further written deduction or credit/authorization following Company's inspection to confirm nonconformity or defect unless pre-authorized by Company.** Company will charge to Customer any and all costs incurred by Company in connection with the handling, shipping, inspection and disposition of any returned Goods that are determined by Company not to have been non-conforming upon Delivery or as to which the warranty hereunder is not applicable.
- D. Upon any proper return pursuant to paragraph C above, whether in connection with a rejection of Goods or an alleged breach of warranty, Company agrees that it will as the sole and exclusive remedy for any non-conformity or breach of warranty, at the Company's sole election, either (i) repair or replace the particular Good or Goods, or (ii) elect to refund the purchase price when it is uneconomical to repair or replace the particular Good or Goods.

V. TERMS OF PAYMENT

- A. Terms of payment shall be specified in the Acknowledgment or Invoice, provided that the Company reserves the right to alter the payment terms upon any Event of Default by Customer hereunder (as set forth in Paragraph VII below) or if Customer's financial condition changes. Any past due account shall bear interest on the outstanding balance at a rate equal to 1-1/2% per month, not to exceed the maximum lawful rate, from the date payment is due. Customer agrees to pay all costs in connection with Company's collection efforts, including without limitation collection agents' and/or attorney fees of

not less than 15% of the outstanding balance (which Customer hereby agrees is reasonable) and all other costs associated with collection proceedings initiated by Company. Pending payment in full of all amounts payable by Customer under the Contract, Company retains, and Customer hereby grants to Company, a first priority purchase money security interest in the Goods.

- B. In addition to the purchase price, Customer shall pay any applicable excise, sales, use or other tax (however designated) imposed on the sale, production, delivery or use of the Goods, to the extent required and not forbidden by law, to be collected by Company from Customer, whether or not so collected at the time of sale, unless valid exemption certificates, acceptable to the applicable taxing authorities, are in the possession of Company before the date of the Invoice.

VI. MODIFICATION/TERMINATION/RESCHEDULE

- A. Orders requiring multiple delivery dates may be scheduled for up to twelve months from the date of first production delivery. Delivery dates and quantities for the total order must be set forth in the Purchase Order, and thereafter may not be modified without the prior written approval of the Company.
- B. Company may, upon notice to Customer, terminate or cancel any portion of the Contract upon the occurrence of any event of Default by Customer under the Contract (as set forth in Paragraph VII below) or any material adverse change in Customer's financial condition. Upon any such termination or cancellation, Customer shall be fully responsible for and shall promptly pay to Company all amounts payable under the Contract, including, but not limited to, amounts payable for any anticipated and undelivered portion of the order, including any and all work in progress.

VII. EVENTS OF DEFAULT

An Event of Default shall occur under the Contract if:

- A. The Customer shall become insolvent or make a general assignment for the benefit of a creditor;
- B. A petition under the Bankruptcy Code is filed by or against Customer;
- C. Customer causes a unilateral cancellation, repudiation or rescheduling under the Contract; or
- D. Customer shall fail to pay any amount payable under the Contract by the date when due, or shall fail to accept and pay for any Goods delivered C.O.D. in accordance with the terms of the Contract.

VIII. RESALE AND RECLAIM OF GOODS

- A. RESALE – The Company may resell goods which are identified in the Purchase Order, after Customer breaches this Contract. If Company resells such goods, Company may determine the damages chargeable to the Customer based upon the resale amount. When the Company resells pursuant to this subsection, the Company may depart from terms and conditions of this Contract to the extent commercially reasonable under the circumstances.

- B. RECLAIM OF GOODS – The Company may reclaim Goods for up to 10 days after the Customer's receipt of the Goods when the Company discovers that the Customer has received goods on credit while being insolvent.

IX. MISCELLANEOUS

- A. Company shall comply with all provisions mandatorily imposed upon Customer in accordance with the terms of any applicable Federal statute and that are required to be included in Customer's Purchase Order.
- B. The Contract will be construed and interpreted solely in accordance with and under the laws of the State of California excluding those laws that direct the application of the laws of another jurisdiction. Customer hereby consents and submits to the jurisdiction of the appropriate courts in the State of California for adjudication of any question of law or interpretation of rights or obligation hereunder.
- C. Neither the Contract nor any portion thereof may be assigned by Customer without the prior written consent of Company.
- D. It is declared and agreed by the Customer that the Customer has entered into this Contract, relying on its own knowledge of the subject matter, and not upon representations made by the Company, or by any person with respect to the character or quality of the subject matter.
- E. If any term, clause, or provision contained in this Contract is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.
- F. Any action for breach under this Contract, or any warranty claim hereunder, must be commenced within one year from the date of delivery of the Goods with respect to which such claim is made.
- G. A waiver by Company of any default by Customer, or any of these Terms and Conditions, shall not be deemed to be a continuing waiver of any other default or of any other of these Terms and Conditions, but shall apply solely to the specific instance to which the waiver is directed.
- H. The Goods may be classified under special U.S. Government commodity control numbers and may require an export license from the U.S. Department of Commerce. U.S. Law states that failure to obtain the appropriate export authorization will result in a fine and/or imprisonment.
- I. Any dispute or controversy arising between the Company and Customer shall be submitted to private, binding arbitration, upon the written request of either party, before a panel of three (3) arbitrators, under the auspices of and in accordance with the rules and regulations then in effect of the American Arbitration Association. ("AAA"). Notwithstanding the foregoing, any action brought by either of the parties seeking a temporary restraining order, temporary and/or permanent injunction, and/or a decree of specific performance of the terms of this Agreement may be brought in a court of competent jurisdiction without the obligation to proceed first to arbitration