



## **STANDARD TERMS AND CONDITIONS OF SALE**

**1. Applicable Contract Provisions.** These Standard Terms and Conditions of Sale, together with any other documents which Caltronics Design & Assembly, Inc. (“Seller”) has attached hereto or has specifically referenced as part of the contract with Buyer shall constitute the entire agreement between Seller and Buyer (the “Agreement”) regarding the purchase of goods from Seller (the “Products”) and supersede all other agreements and understandings, whether written or oral, between the parties with respect to the purchase of the Products. By accepting delivery of the Products, Buyer agrees to be bound by and accept the terms and conditions of this Agreement. These terms and conditions are subject to change at any time in Seller's sole discretion upon written notice. Buyer’s acceptance of any quotation submitted by Seller is expressly conditioned upon Buyer’s acceptance of these Terms and Conditions of Sale, and no other terms or conditions shall apply to the sale of Products by Seller to Buyer unless expressly agreed to by Seller in writing. THIS AGREEMENT SHALL APPLY UNLESS BUYER HAS A SEPARATE WRITTEN AGREEMENT WITH SELLER THAT SPECIFICALLY STATES THAT SUCH WRITTEN AGREEMENT REPLACES THIS AGREEMENT.

### **2. Purchase Price.**

a. Price. The price for the Products shall be the price quoted by Seller to Buyer in writing, or, in the event no quotation was made, at the price set forth on Seller’s price list in effect as of the date of delivery requested by Buyer. Typographical errors in stated product prices are subject to correction. Prices may be adjusted by Seller, if Buyer requests changes to the original quote.

b. Shipping, Insurance and Taxes. All prices for Products are quoted F.C.A. Seller's Minnesota facility (as such term is defined in Incoterms 2010). Seller will arrange for shipment of the Products to the location stated by Buyer in the purchase order. All charges relating to the shipment, delivery or insuring of the Products during shipment shall be added to the invoice for the Products and shall be paid by Buyer. The amount of any present or future sales, revenue, excise, VAT or other tax applicable to the sale of the Products to Buyer, shall be added to the purchase price and shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities. Buyer may also provide Seller with shipping instructions and account numbers to be charged to Buyer's account.

### **3. Payment Terms.**

a. Terms of Payment. Terms of payment are net thirty (30) days from the date of invoice unless stated otherwise on the invoice. Seller may alter or revoke credit terms at any time without notice. If, in Seller’s sole judgment, Buyer’s financial condition or any other circumstance causes Seller to be insecure with respect to Buyer’s performance of any obligation under a purchase order, Seller may accelerate and demand immediate payment of any amounts owed Seller, cancel a purchase order or suspend performance under a purchase order.

b. Disputed Invoices. Buyer shall pay invoices rendered by Seller covering Products not in dispute regardless of disputes relating to other invoices. Buyer waives the right to assert offsets or counter-claims with respect to such invoices.

c. Late Payment Fee. Any amounts not paid by Buyer when due will be subject to a late payment fee computed daily at a rate equal to the lesser of one percent (1.0%) per month or the highest rate permissible under applicable usury law. Buyer shall also be liable to Seller for all costs incurred by Seller in its collection of any amounts owing by Buyer which are not paid when due, including collection agency fees and expenses and



reasonable attorneys' fees and expenses, regardless whether actual lawsuit is commenced against Buyer. In addition, if any amounts are not paid by Buyer when due, Seller may elect to withhold further shipments of Products to Buyer or ship Products on a C.O.D. basis until the account is current.

## **5. Shipment and Delivery Terms.**

a. Shipment. Seller will package the Products for domestic or international shipment in accordance with standard commercial practices. The carrier shall be deemed to be Buyer's agent, and Buyer shall make all claims with respect to damage in transit against the responsible carrier.

b. Title to Products, Risk of Loss. Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a common carrier, or to any private carrier designated by Buyer, for shipment to Buyer. Buyer's rejection of any Products shall not shift such risk until the Products are returned to Seller, freight prepaid, pursuant to Seller's written authorization.

c. Delivery Schedule. Buyer shall provide Seller with reasonable and agreed upon lead time from the date a purchase order is submitted and the delivery dates requested by Buyer in the purchase order. Any delivery dates agreed to by Seller are estimates only based on prevailing conditions as of the date agreed, and Seller's failure to meet the same shall not be deemed a breach of this Agreement by Seller.

d. Force Majeure. Seller shall not be liable to Buyer for any delay or failure of delivery or of any other performance caused in whole or in part by any contingency beyond Seller's reasonable control, including, without limitation, fire, flood, acts of God, terrorist activities, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources. In the event of raw material shortages Seller may allocate product production among its customers without liability to Buyer.

e. Inspection and Acceptance. Buyer shall inspect all Products upon arrival and shall notify Seller in writing of any shortages, nonconformance with the purchase order or any other failures to conform to this Agreement which are reasonably discoverable upon arrival. Any such shortages and other discoverable nonconformance or other failures under this Agreement not reported within thirty (30) days after receipt of the Products shall be forever waived by Buyer.

f. Cancellation or Modification of Order. Buyer's order shall not be subject to cancellation or reduction in any amount after Seller has accepted such order, without the express, prior written consent of Seller. If Seller agrees to any cancellation by Buyer, Buyer shall cover Seller's damages relating to the cancellation of the shipment, including but not limited to, all parts and labor to date.

## **6. Limited Warranty.**

a. Limited Warranty. Seller warrants to the Buyer that (a) the product will be free from defects in materials and workmanship at the time of shipment and (b) the product will be free from defects in materials and workmanship for a period of six (6) months to one (1) year after the date of shipment per the Seller's discretion. Seller's SOLE OBLIGATION and Buyer's SOLE REMEDY in the event of a defect covered by this warranty, will be, at Seller's option, to (a) replace or repair the defective Product, or (b) refund to Buyer the purchase price paid by Buyer for such defective Product.

b. Warranty Procedure. In order to recover under this Limited Warranty, Buyer must promptly contact Seller upon discovery of the alleged defective Product during the limited warranty period. Buyer shall return the alleged defective Product to Seller, FOB Stacy plant location, only upon receipt of a Return Authorization Number from Seller. Products returned without written permission of Seller will not be accepted for credit and will be returned to Buyer F.O.B. Buyer's plant. Determination of any warranty claim shall be solely determined by Seller in its reasonable discretion. All freight and insurance costs for shipping repaired, reworked or replacement Product to Buyer shall be paid by Buyer unless determined to be a warranty issue.

c. Limited Warranty Exclusions. THIS LIMITED WARRANTY DOES NOT COVER ANY LOSS CAUSED BY ACCIDENTS, CARELESS HANDLING OF THE PRODUCT OR FAILURE TO MAINTAIN THE PRODUCT IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS. THIS LIMITED WARRANTY ALSO SHALL NOT APPLY TO ANY PRODUCT WHICH HAS BEEN DAMAGED IN TRANSIT, ABUSED, ALTERED, MODIFIED, OR USED IN A MANNER NOT ORIGINALLY INTENDED. THIS LIMITED WARRANTY ALSO SHALL NOT APPLY TO BUYER'S DESIGNS OR PRINTS PROVIDED TO SELLER.

d. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6(a) ABOVE, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR ANY OTHER MATTER. No employee or representative of Seller shall have any authority to bind Seller to any warranty or representation, except as expressly stated herein.

**7. Default.** In the event Buyer (i) defaults in payment of any sum due Seller or (ii) files for relief under the Bankruptcy Act; or (iii) has an involuntary petition filed against Buyer which is not dismissed within thirty (30) days, or (iv) is adjudicated bankrupt; or (v) makes an assignment for the benefit of creditors; Seller may, in addition to any and all other remedies provided by law, (a) suspend in transit any shipment of product (whether or not pursuant to this Agreement); (b) decline to make further shipments; (c) postpone any further performance under this Agreement or any other agreement with Buyer until such default is corrected; (d) immediately cancel this Agreement; (e) declare all amounts owed by Buyer under this or any other agreement to be due and payable immediately; and/or (f) exercise all rights of a secured party

**8. LIMITATION OF REMEDIES.** SELLER SHALL HAVE NO LIABILITY TO BUYER OR ANY PERSON CLAIMING THROUGH BUYER FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS.

## **9. General Terms.**

a. Applicable Law. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Minnesota, without application of its conflict of law provisions.



b. Assignment. BUYER MAY NOT ASSIGN THIS AGREEMENT WITHOUT SELLER'S PRIOR WRITTEN CONSENT. Seller may assign all or any part of its rights and/or obligations under this Agreement to any Seller subsidiary or any unrelated subcontractor without Buyer's consent.

c. Modification and Waiver. No purported amendment, modification or waiver of any provision hereof shall be binding unless set forth in writing signed by an officer of Seller and an officer of Buyer. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. The failure of Seller or Buyer to enforce any provision of this Agreement at any time shall not be construed to be a waiver of such provision nor of the right of Seller or Buyer thereafter to enforce such provision.

d. Severability. If any provision hereof is held to be unenforceable by final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of the remaining provisions hereof.

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