

Digitran, a Unit of Electro Switch Corp.
Standard Terms & Conditions

1. General

- a. No variation of these terms and conditions by "Buyer's" purchase order or otherwise, is authorized or valid unless made in writing and signed by a duly authorized officer of Digitran, the "Seller".
- b. Clerical errors are subject to correction.
- c. Force Majeure. Seller assumes no responsibility or liability for any loss or damage occurring by reason of delay or inability to deliver caused by weather, fires, strikes, accidents, embargoes, delays or carriers, insurrection, riot, acts of the civil or military authorities, or from any other cause or event, which is unavoidable or beyond Seller's reasonable control, and if delays from such causes should occur, Seller's delivery time shall be correspondingly extended.
- d. If, for reasons other than the foregoing, noted in 1c. above, should Seller default or delay or not deliver product, Buyer's sole remedy against Seller shall be an option to cancel its purchase order, through written notice to Seller.
- e. All contracts and orders are subject to credit approval and to Seller's written acceptance. Seller may, at any time, alter or suspend credit, refuse shipment or cancel unfilled orders when, in Seller's opinion, the financial condition of the Buyer, or the status of the account warrants, or when delivery is delayed by fault of the Buyer, or the Buyer is delinquent in any payment.
- f. The acceptance of shipment by common carrier shall constitute a delivery to the Buyer and Seller shall not be responsible for any loss or damage that occurs in transit.

2. Terms of Payment

- a. Net 30 days unless otherwise specified by Seller
- b. All shipments F.O.B. factory of origin unless otherwise stated in writing.
- c. Payments are to be made in United States currency.

3. Taxes

The prices stated do not include sales, use, excise or similar taxes. The amount of any such tax, if applicable, shall be paid by the Buyer and will be added to Seller's invoice unless the Buyer shall provide a tax exemption certificate.

4. Deliveries

- a. Delivery is based on current lead times, subject to the procurement of any Buyer specified material needed in producing the parts.
- b. Delivery of the items is stated from date of receipt of Seller's order acknowledgement.
- c. The acknowledgement is based on the quantity released for production and/or shipment at one time. However, partial deliveries may be mutually agreed upon and specified providing they consist of a firm order for a specified quantity and complete delivery to be made within a maximum of (12) twelve months after the date the order is accepted.

5. Non-Recurring Engineering [NRE]

- a. NRE is charged on the original order acknowledgement unless otherwise indicated.
- b. If changes are subsequently made, an NRE charge covering the cost of the change will be made.

6. Changes

- a. Specifications: The Buyer is responsible for all specification changes not specifically noted by revision change letter, number or changed drawings brought to Seller's attention in writing. Changes in design or specification may extend lead times and/or increase NRE, and/or increase unit price.
- b. Changes in delivery schedules or quantity by the Buyer will be reviewed for their effect on price. Extensions in delivery beyond original schedules will be accommodated with one (30) thirty-day grace period. Beyond this, the price will be reviewed, and a new price may be established in accordance with the new delivery schedule. Requests to expedite orders will be accommodated only to the extent production scheduling and material availability.

7. Order Cancellation

Order cancellation shall be by mutual agreement in writing. Upon cancellation of an order, Buyer shall be liable for termination charges, which shall include: (a) completed items at the contract price; (b) all costs, direct and indirect, incurred and committed for Buyer's canceled order; and (c) reasonable allowance for prorated expenses. Cancellation charges will be invoiced and due according to the payment terms of the underlying order.

8. Claimed Shortages

Claims for errors in quantity or component part shortages, must be made in writing within (10) ten days after receipt of material. Such claims must be accompanied by a reference to the order number.

9. Warranty: The Following is in Lieu of all other Warranties Expressed or Implied.

- a) Seller warrants all products manufactured to be free of defects in material and/or workmanship for a period of (1) one year after date of shipment. Seller's responsibility under this warranty is limited to the repair or replacement of defective material and to those claims made within the Warranty period.
- b) Buyer must notify Seller of rejected shipments in writing within thirty (30) days of receipt of product. No material is to be returned without the prior written consent of Seller. Seller's liability is limited to the repair or replacement of defective material and to those claims made within the Warranty period. It is Seller's policy not to sell internal spare parts. Any field disassembly, modification, misuse, or use of parts for other than their intended and designed purpose will void the warranty, and Seller will assume no liability for any damage as a result of disassembly, modification, misuse, or use of parts for other than their intended and designed purpose.
- c) Product returned for repair is subject to a (1) one-year limited warranty from the date of the repair.

- d) This Limited Warranty is Exclusive and In Lieu Of All Other Warranties, Expressed or Implied. Seller specifically disclaims the implied warranties of merchantability and fitness for any particular purpose of product sold. The remedies enclosed within are the buyer's sole and exclusive remedies.
- e) SELLER HAS NO KNOWLEDGE OF AND MAKES NO REPRESENTATIONS WITH RESPECT TO THE USEFULNESS AND/OR MERCHANTABILITY OF ANY PRODUCT WHICH IS MADE TO BUYER'S SPECIAL ENGINEERING SPECIFICATIONS.

10. Liability

Seller shall not be liable under any circumstances to buyer or others dealing with the buyer for any indirect, special, consequential, incidental, or punitive damage of any sort, or for any expenses incurred by reason of the sale or use of any defective product, whether based on tort or breach of contract and/or warranty.

11. Return of Material

No material is to be returned without the prior written consent of Seller. If the product has been found to have been damaged for any reason not the fault of Seller, the Buyer will be notified, and the repair or replacement of the product will be quoted for disposition. If product is repairable, Seller offers a limited (1) One Year Warranty on products returned for repair, which are outside the original warranty period.

12. Certification of Compliance

Certification of Compliance will be furnished as a part of the original order or an amendment thereof, or upon written request received by Seller prior to shipment. Certifications requested may be subject to charge and if so, will be noted in the quote/acknowledgement.

13. Indemnity

Buyer shall indemnify Seller against loss and save Seller harmless from and against any claims or liabilities or costs by reason of any alleged patent infringement arising out of the manufacture or sale of any product furnished to Buyer, which is not part of Seller's standard line of products and which is manufactured and supplied on Buyer's specifications. Buyer shall defend all such actions or reimburse Seller for the cost of the defense of legal proceedings.

14. Patents

In the event patent infringement charges are brought against Buyer as the result of use of Seller's product and Seller determines the infringement charge to be valid, Seller's indemnification obligation extends only to the following, the choice of remedy being the Seller's:

1. replacement of infringing product with a non-infringing product
2. rework of the product to make it a non-infringing product
3. securing a license under the patent
4. refund of the purchase price

Seller shall have no liability under this section unless Buyer: (i) gives Seller prompt written notice of any claim made against Buyer; (ii) provides Seller with the opportunity to take over, settle, or defend any claim through counsel of Seller's choice and under its sole direction; and (iii) makes available to Seller all defenses against any such claim, action, suit, or proceeding known to or available to Buyer.

15. Sole Remedies

Buyer's sole remedies are provided herein. In no event shall Seller be liable for any costs of Buyer or for any indirect, special, consequential, incidental, or punitive damages of any sort, whether based on Tort or breach of contract and/or warranty.

16. Applicable Law

The laws of the State of Delaware will govern, excluding provisions on conflict of laws.

17. Miscellaneous

These terms and conditions (including those stated on the face hereof) shall constitute the entire agreement of Seller and Buyer, superseding the terms and conditions in Buyer's purchase order and all prior agreements or understandings, written or oral. Buyer may not assign any rights or duties hereunder without Seller's written prior consent. No representation, warranty, course of dealing, or trade usage not contained or referenced herein will be binding on Seller. No failure by Seller to enforce at any time for any period the provisions hereof shall be construed as a waiver of such provision or of the right of Seller to enforce thereafter each and every provision. It is expressly understood that any technical advice furnished by Seller with reference to the use of its products is given without charge, and Seller assumes no obligation or liability for advice given or results obtained, as such advice is given and accepted at Buyer's risk

18. Severability

If any part of this agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.