

Deep Sea Electronics Inc.

Terms & Conditions

Domestic

May 13, 2002

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DEEP SEA ELECTRONICS INC. TERMS AND CONDITIONS -- DOMESTIC

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1. PRICES AND TERMS:

- (a) Standard terms of payment are "net 30 days from date of invoice." All sales are subject to credit approval.
- (b) A service charge of one percent (1.5%) per month will be payable on any balance past due and unpaid.
- (c) Prices are F.O.B. Deep Sea Inc. unless otherwise agreed by Deep Sea Electronics Inc. in writing. Claims against the carrier for damage caused during shipment must be made by the Buyer within 2 weeks.
- (d) After formal acknowledgment of purchase order, prices are firm, except on items having an acknowledged shipment date of twenty-four weeks or more after acknowledgment of the order, which are subject to escalation. Such escalation will equal the percent change in the Wholesale Index for Industrial Commodities of the U. S. Department of Labor or equivalent replacement index, from the date of acknowledgment to the date of shipment.
- (e) Acknowledged orders for standard stock items placed on "hold" or "do not release before" status will be billed at the price in effect at date of shipment, or a service charge at the rate of one (1%) per month will be added to the original quoted price from the date when delivery was originally due until date of shipment, whichever method shall result in the higher price. Deep Sea Electronics Inc. reserves the right to treat a request for "hold" or "do not release before" status as a cancellation under sub-paragraph (h).
- (f) Prices do not include sales, use, excise, or similar taxes. Any such tax that is required to be collected or paid by Deep Sea Electronics Inc. is considered the Buyer's responsibility and as such may be added to the invoice, or invoiced later, as a separate charge to be paid by the Buyer, unless the Buyer has furnished Deep Sea Electronics Inc. with an applicable exemption certificate.
- (g) All prices are based upon standard packaging for domestic shipping in accordance with Deep Sea Electronics Inc.'s standard specifications. If special packaging is required or requested, refer to the factory for price additions.
- (h) Cancellations of Purchase Orders:
 - (1) Orders for standard stock items may be canceled by written notice to Deep Sea Electronics Inc. received prior to the acknowledged shipping date, subject to payment by the Buyer of a cancellation charge of 10% of the purchase price as liquidated damages.
 - (2) Orders for special or non-stock items may not be canceled without prior written approval by Deep Sea Electronics Inc. Normally, such approval will not be given if written cancellation notice is received by Deep Sea Electronics Inc. less than thirty (30) days prior to the acknowledged shipping date, in which case the items may be completed, shipped and invoiced at the full contract price. If such approval is given, any items completed at time of receipt of written cancellation notice will be shipped and invoiced at the contract price. Work on the balance of the order will be stopped as promptly as reasonably possible, and the Buyer will pay Deep Sea Electronics Inc. a cancellation charge as liquidated damages equal to cost incurred for in completed items plus 20%, less any net recovery to Deep Sea Electronics Inc. on disposition of such items to others within a period of thirty days after the cancellation. Cost will include labor, burden, indirect expenses, and materials and purchased parts received or committed for, all as determined by Deep Sea Electronics Inc. in accordance with its standard accounting practice. Any items which Deep Sea Electronics Inc. can use economically to fill other active orders will be restocked at a 20% handling charge.
- (i) All claims against Deep Sea Electronics Inc. for shortages on shipments must be made within five days of delivery by carrier at destination.
- (j) The Buyer agrees to permit Deep Sea Electronics Inc., at their option, to file security interest, in compliance with Uniform Commercial Code (UCCM Form), in the purchased equipment until payment in full for the same has been received by Deep Sea Electronics Inc.

2. INVOICING:

- (a) Invoices to Buyer will be issued at time of shipment or as soon as practicable thereafter, except as otherwise provided in the proposal or acknowledged order for progressive payments.
- (b) Partial invoices may be issued for partial shipments.

3. ACCEPTANCE OF ORDER:

- (a) Purchase orders based on this proposal are subject to acceptance only at Deep Sea Electronics Inc.'s home office, and no contract shall be deemed to have been created until written acknowledgment has been mailed or delivered to the Buyer by Deep Sea Electronics Inc.

4. ELECTRICAL EQUIPMENT:

- (a) Electrical equipment included in this proposal will be supplied by Deep Sea Electronics Inc., and will be the make available in stock.
- (b) Electrical equipment is built to Deep Sea Electronics Inc. standards making it suitable for normal applications in accordance with its specifications and operating instructions. Compliance with state and local electrical codes or specific company or industry electrical standards must be requested by the Buyer and be mutually agreed upon. The Buyer must furnish the standards, specifications or codes requested.

5. SHIPMENT AND RISK OF LOSS:

- (a) Risk of loss and title shall pass to the Buyer upon delivery to carrier by Deep Sea Electronics Inc. Risk of loss passes to Buyer whether or not shipment is made prepaid.
- (b) The shipping date specified is:
 - (1) Subject to the scheduling of prior orders and to confirmation by Deep Sea Electronics Inc. in its acknowledgment of Buyer's order.
 - (2) Computed from the date of acknowledgment of Buyer's order by Deep Sea Electronics Inc. and in case of special items from receipt of complete information necessary to design and manufacture the special items.
 - (3) Subject to any changes that may be caused by procedures or priorities which may be set by the U. S. Government or any of its agencies.

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- (4) To be considered approximate and not of the essence, since the ability of Deep Sea Electronics Inc. to complete and ship the equipment ordered by such date may be dependent upon conditions over which it has no reasonable control or which it cannot predict exactly. In no event shall Deep Sea Electronics Inc. be liable for damages, including without limitation, lost profits, lost production, consequential or other special damages, resulting from delays in production or shipment caused by strikes, labor disturbances, fires, war, civil riots, acts of Providence, shortage of labor and/or materials, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries or any other cause over which it has no reasonable control.

- (c) Buyer's or designated consignee's acceptance of delivery from the carrier shall constitute a waiver of any claim for delay.

6. INSTALLATION AND ACCEPTANCE OF GOODS:

- (a) Installation will be at Buyer's cost and must be performed strictly in accordance with manuals and instruction sheets furnished by Deep Sea Electronics Inc. Except as otherwise expressly provided in this proposal, Deep Sea Electronics Inc. will not be obligated to furnish personnel or other on-site assistance for installation.

7. SPECIFICATIONS AND PERFORMANCE:

- (a) Unless expressly set forth in this proposal and as a term of the acknowledged order, descriptions, specifications, drawings and other particulars, excluding software materials (which are covered by paragraph 9), however issued by or on behalf of Deep Sea Electronics Inc., are not warranted and Deep Sea Electronics Inc. will not be bound thereby. If any such items are warranted, the Buyer's rights and obligations with respect thereto will be the same as those set forth in paragraph 9, subject to the limitations contained therein.
- (b) In no event shall Deep Sea Electronics Inc. be responsible for performance figures supplied by subcontractors or other third parties.

8. RETURNED GOODS POLICY:

- (a) No goods will be accepted for return without prior written authorization from Deep Sea Electronics Inc. All returns are subject to Deep Sea Electronics Inc.'s inspection upon receipt. Credit will not be allowed on damaged or used material.
- (b) Restocking charges on returned goods with an invoice value not exceeding \$100.00 will be \$20.00. Restocking charges on returned goods with an invoice value greater than \$100.00 will be 20% of the invoice price.
- (c) All goods authorized for return are to be shipped prepaid to Deep Sea Electronics Inc., Rockford, Illinois. Collect shipments will be refused unless written authorization has been given prior to shipment.

9. WARRANTY; LIMITATION OF LIABILITY:

- (a) THE WARRANTY CONTAINED HEREIN IS IN LIEU OF ANY OTHER WARRANTY OR CONDITION, WHETHER EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE, INCLUDING ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR PURPOSE (*WHICH ARE SPECIFICALLY EXCLUDED UNDER THIS CONTRACT*), OTHER THAN A WARRANTY OF TITLE.
- (b) Deep Sea Electronics Inc. warrants the products listed in this proposal to be free from defects in material and workmanship under normal use and service in the plant of the original user thereof for twenty-four (24) months from date of shipment by Deep Sea Electronics Inc.
- (c) Deep Sea Electronics Inc. warrants any computer program, or programming manual ("software materials") to be free from defects under normal operating conditions in the plant of the original user for twenty-four (24) months from the date of shipment by Deep Sea Electronics Inc. This warranty will not require Deep Sea Electronics Inc. to furnish new software materials to serve a function not intended to be served by the original item and will be void if any change or addition has been made in or to Deep Sea Electronics Inc.'s software materials without its prior written consent.
- (d) This warranty applies only if the user has in its employ qualified maintenance and operating personnel and maintenance and operation are in accordance with applicable manuals and instruction sheets furnished by Deep Sea Electronics Inc.
- (e) This warranty is extended to the Buyer only and is not transferable or assignable, except that if the goods are resold to the original user by a Buyer which is a distributor or original equipment manufacturer.
- (f) Any products or parts covered by this warranty that are defective, will be repaired or replaced at Deep Sea Electronics Inc.'s option, as the sole and exclusive remedy available to Buyer. Deep Sea Electronics Inc. reserves the right to inspect products or parts that are asserted to be defective to confirm their condition. Deep Sea Electronics Inc. will not grant any allowances for repairs or alterations made without its prior written consent.
- (g) Deep Sea Electronics Inc. shall not be liable under this warranty unless Buyer gives written notice of any claimed defect, including a detailed description of the problem or difficulty, and establishment that the product has been properly installed, maintained, and operated, to Deep Sea Electronics Inc. immediately upon Buyer's discovery of the defect within the warranty period and the right of inspection is given to Deep Sea Electronics Inc. while the product is in the claimed defective condition. Operation of the product must be suspended until written clearance is issued by Deep Sea Electronics Inc. for continued operation, provided that Deep Sea Electronics Inc., upon receipt of notice of a claimed defect, will proceed without unreasonable delay (subject to the capacity and prior commitments of its Service Engineer staff) to remedy any defect coming within the warranty that is found by Deep Sea Electronics Inc.'s inspection to exist.
- (h) This warranty will not apply to products that have been subject to misuse, negligence or accident in installation or operation, or which have been modified or otherwise altered, or which have been used for purposes other than the purposes for which the products were designed.
- (i) Deep Sea Electronics Inc. will pay shipping charges on warranty replacements equal to normal parcel post or ground transportation on parts found defective by its Inspection Department. Excess charges for special handling, such as Air Freight, shall be paid by the Buyer. Shipment of such replacement parts is on the condition that Buyer concurrently return the defective parts to Deep Sea Electronics Inc.'s factory in Rockford, Illinois, with shipping charges prepaid. If defective parts are not received within 30 days after the replacement parts are received, an invoice for the list price of the replacement part will be issued.
- (j) Deep Sea Electronics Inc. warrants repair or replacement parts, except for non-warranty items as outlined in paragraph 9.(a), used under normal operating conditions, to be free of defects in material and workmanship for 90 days from the date of shipment by Deep Sea Electronics Inc. or until the expiration of the original warranty, whichever is greater.
- (k) Deep Sea Electronics Inc. reserves the right to make changes in design or to make additions to or improvements in its products without imposing any obligation upon itself to install them on its products previously manufactured.
- (l) This warranty will be effective only if and for so long as the Buyer complies with all payment obligations under the acknowledged order.
- (m) Buyer's sole remedy under this warranty and for any other claim, including without limitation negligence, with respect to the products covered by this proposal (and their design, manufacture, sale, delivery, resale, installation, inspection, repair, operation and use) shall be for repair or replacement as expressly set forth herein. Deep Sea Electronics Inc. shall in no event be liable for loss of production, loss of profits or other indirect, consequential or incidental damages, and Deep Sea Electronics Inc.'s maximum liability under no circumstances shall exceed Buyer's purchase price allocable to the defective product or part thereof. Deep Sea Electronics Inc. may, at its option, repurchase at the Buyer's purchase price a defective product under warranty in full satisfaction of Deep Sea Electronics Inc.'s obligations hereunder.

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10. SERVICE:

- (a) Except for warranty service (see paragraph 9), all field service must be initiated by the Buyer's purchase order and will be charged at the rate in effect from time to time (see price schedule) per eight (8) hour day, plus expenses. Service will be performed by an authorized Deep Sea Electronics Inc. Service Engineer or representative. Service time begins at departure from Deep Sea Electronics Inc.'s location and ends upon return to the same. Hours in excess of eight (8) hours, or Saturday hours, will be billed at one and one-half (1-1½) times normal rate, and Sunday and Deep Sea Electronics Inc. holidays will be billed double normal rate. Minimum billing is four (4) hours.

11. PATENT INDEMNITY:

- (a) Deep Sea Electronics Inc. agrees to defend any suit or proceeding brought against Buyer or the original user based on the claim that the product as furnished by Deep Sea Electronics Inc. infringes any claim of any currently existing United States patent, other than a claim covering a process or product thereof, and to pay any damages and costs awarded therein against Buyer or such user, provided Deep Sea Electronics Inc. is given prompt written notice of any such claim, together with copies of all demands and complaints, is given the right to procure for Buyer or such user the right to continue using the product, to modify it so that any infringement no longer exists or to remove the product or part thereof and refund the original user's net book value thereof, and is given control over any negotiations looking toward settlement and the defense of any such suit or proceeding, and provided Buyer or such user extends full cooperation to Deep Sea Electronics Inc. in all such matters. This agreement shall not apply to infringements by reason of the manufacture, use or sale of the product in combination with other equipment or in the operation of any process, or the product of any process.
- (b) The foregoing states the entire obligation of Deep Sea Electronics Inc. for patent infringement and is in lieu of any statutory warranty relating to infringements, and under no circumstances shall Deep Sea Electronics Inc. be liable for loss of production, loss of profits or any other indirect, consequential or incidental damages. The foregoing indemnity shall not apply to any products manufactured by Deep Sea Electronics Inc. in accordance with drawings, specifications or designs furnished by Buyer but in such case Buyer shall indemnify Deep Sea Electronics Inc. in the same manner and to the extent set forth in subparagraph (a). Deep Sea Electronics Inc. is entitled to indemnity from certain of its suppliers, and the rights and options vested in Deep Sea Electronics Inc. hereunder shall extend to such suppliers and may be exercised by them.

12. SAFETY:

- (a) Deep Sea Electronics Inc. assumes no responsibility for damages, injuries or accidents caused by improper or other than normal use of this or any related equipment.
- (b) Deep Sea Electronics Inc. warrants that the products listed in this proposal will comply, to the best of its knowledge and belief, as of the date of the acknowledgment of Buyer's order, to all OSHA rules and regulations of general application to the manufacturer. Deep Sea Electronics Inc., however, reserves the right to dispute any interpretation which may be applied to such rules and regulations as they related to this order and shall in no event be responsible for the application of such rules and regulations peculiar to the Buyer's (or its original user customer's) industry or installation.
- (c) This system or equipment includes Deep Sea Electronics Inc.'s standard safety devices normal to such system or equipment. Additional safety devices may be required for other than Deep Sea Electronics Inc. or OSHA rules or regulations of general application to the manufacturer, and because of Buyer's (or its original user customer's) superior knowledge of its plant and operating conditions, it is Buyer's responsibility to identify and furnish additional safety devices particular to Buyer's (or its original user customer) intended usage. Buyer will (and will require its original user customer, if any, to agree to) hold harmless, indemnify and defend Deep Sea Electronics Inc. against any and all claims, suits, losses, costs and expenses arising out of injury, death, or damage to person or property, caused, or allegedly caused, directly or indirectly by the absence of a safety device on the machinery or equipment described herein.
- (d) Buyer will (and will require its original user customer, if any, to agree to):
 - (i) hold harmless, indemnify and defend Deep Sea Electronics Inc. against any and all claims, suits, losses, costs and expenses arising out of injury, death or damage to person or property caused or allegedly caused directly or indirectly by operation of machinery or equipment described herein without all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Deep Sea Electronics Inc. or with persons other than qualified operating personnel closer than ten feet of the machinery or equipment; and
 - (ii) notify Deep Sea Electronics Inc. promptly, and in any event within 24 hours, of any accident or malfunction involving Deep Sea Electronics Inc.'s products which result in personal injury, death or damage to property, cooperate fully with Deep Sea Electronics Inc. in investigating and determining the cause of such accident or malfunction, and hold harmless, indemnify and defend Deep Sea Electronics Inc. from any claims arising from such accident or malfunction as to which such notice is not given.

13. WORKING DRAWINGS, ETC.:

Any proposals, prints, brochures, drawings, or other information furnished to the Buyer by Deep Sea Electronics Inc. is intended for confidential use by the Buyer (or Buyer's original user customer), shall remain the property of Deep Sea Electronics Inc. and shall not be used to the detriment of Deep Sea Electronics Inc.'s competitive position. Should such confidential information ever be used to the detriment of Deep Sea Electronics Inc.'s competitive position, Deep Sea Electronics Inc. shall be entitled to damages and an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information, and any other available remedy at law or in equity.

14. GOVERNING LAW:

All rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Illinois, and any dispute or cause of action arising hereunder shall be heard in Winnebago County, State of Illinois, for state jurisdiction, and the Northern District of Illinois, Western Division, for federal jurisdiction.

15. CLERICAL ERRORS:

Clerical errors are subject to correction. Errors noted by Buyer must be brought to the attention of Deep Sea Electronics Inc. as soon as noted or suspected.

16. ENTIRE CONTRACT:

Acceptance by Deep Sea Electronics Inc. of any order, and therefore the imposition of responsibilities by Deep Sea Electronics Inc., is expressly made conditional on Buyer's assent to all Terms and Conditions set forth, herein, and this writing shall constitute the entire Terms and Conditions of the contract of sale notwithstanding any different or additional provisions on Buyer's order, unless otherwise expressly agreed in writing by Deep Sea Electronics Inc.