

TERMS AND CONDITIONS OF SALE

1. The material on the reverse side hereof and the terms and conditions specified herein constitute the entire and only agreement between the parties hereto ("Contract of Sale"). Any variation between the terms and conditions set forth in the Buyer's Acceptance and these Terms and Conditions of Sale shall constitute a counteroffer only, which shall not be deemed accepted by Eagle Comtronic's, Inc. ("Eagle") unless Eagle shall specifically and expressly assent in writing to said counteroffer.
2. No Term or Condition of Sale specified herein may be added to, modified, superseded or otherwise altered except by a written agreement signed by an authorized representative of Eagle. Each shipment received by Buyer from Eagle shall be deemed to be only upon the terms and conditions specified herein except as they may be added to, modified, superseded or otherwise altered as heretofore provided.
3. Buyer acknowledges that it has entered this Contract of Sale relying on its own knowledge of the subject matter, and not upon any representations made by Eagle with respect to the character or quality of the goods. Furthermore, the Buyer declares and agrees that unless an affirmation, representation or warranty is specifically and expressly included within this Contract of Sale, it is not a subject of agreement between the parties and shall not be enforceable against Eagle.
4. The Buyer agrees to pay the total amount due under this Contract of Sale within thirty (30) days of delivery of an invoice or the goods purchased, whichever is earlier. All Payments made after thirty (30) days shall incur interest charges at the rate of one and one-half percent (1-1/2%) per month, which is an annual interest rate of eighteen percent (18%). If timely payment is not made for the goods as herein provided, this contract may also be terminated at the election of Eagle, in which event all goods received by the Buyer are to be returned to Eagle within five (5) days of such termination, and the Buyer shall be liable to Eagle for any expenses and depreciation resulting from such termination and return of the goods.
5. The Buyer agrees that delivery shall be F.O.B. at Eagle's office unless Eagle has otherwise so designated in writing. The risk of loss shall be on the Buyer after delivery is made or tendered by Eagle to the carrier. The dates of delivery are estimates of approximate dates and not a guarantee of a particular day of delivery, Eagle shall not be liable for any damages sustained by the Buyer during shipment of the goods that Eagle could not prevent by reasonable prudent care. Any claim which Buyer may have relative to damage sustained in transit shall be made by Buyer against the carrier. All claims for shortages or defects shall be made in writing within fifteen (15) days after receipt of the goods by the Buyer to Eagle. Failure to provide such timely written notice shall constitute an unqualified acceptance of the goods and a waiver of all claims.
6. The Buyer hereby declares and agrees that Eagle has no special knowledge of Buyer's operations or requirements and Buyer agrees that the goods are purchased by Buyer because of its independent determination as to the goods suitability for the Buyer's intended use. Eagle warrants to the Buyer only that its goods are free from defects in material and workmanship under normal use and service for a period of 90 days from delivery. Eagle's obligation under this warranty shall be limited to the repair or exchange of goods which may prove defective under normal use and service and which Eagle's examination shall disclose to its satisfaction to be defective notwithstanding the Buyer's exercise of reasonable prudent care in use and service of the goods.
7. THERE ARE NO ADDITIONAL WARRANTIES OTHER THAN THOSE SPECIFICALLY SET FORTH IN PARAGRAPH "6" OF THIS CONTRACT OF SALE, EITHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OF EAGLE'S GOODS SOLD HEREUNDER, AND EAGLE'S LIABILITY ON ITS WARRANTY SHALL IN NO EVENT EXCEED THE COST OF THE GOODS SO SOLD. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NONINFRINGEMENT, EXCEPT AS SET FORTH HERETOFORE.
8. Except as limited by Eagle's obligation to repair or exchange the goods set forth in paragraph "6" of these Terms and Conditions of sale, the Buyer agrees to indemnify Eagle and hold it harmless from and against all damages, claims and liabilities of every nature whatsoever, including, without limitation, reasonable legal expenses, arising in connection with or out of the operation, use and sale of goods, products or parts furnished to Buyer.
9. If the financial responsibility of the Buyer becomes impaired or unsatisfactory to Eagle, or Buyer is in default to Eagle under this or any other contract, advance cash payment or satisfactory security may be requested of the Buyer, and shipments may be withheld until such payment or security is received. Buyer shall make no deductions from payments due hereunder.
10. The Buyer hereby grants to Eagle a security interest in the goods and replacement goods sold hereunder to secure the payment and performance of the indebtedness and obligations set forth in this Contract of Sale. Default in the payment or performance of any of the obligations is a default under this security agreement. Upon any such default, the Seller as a secured party may declare all of the obligations immediately due and payable and shall be entitled to exercise all of the rights and remedies of a secured party under the Uniform Commercial Code. If payment is not made by the Buyer to Eagle within (30) days of the date of invoice, or if any other default is committed hereunder, the Buyer agrees to reimburse Eagle for all reasonable attorney and legal fees incurred by Eagle in enforcing any right or exercising any remedy hereunder; and this obligation shall be deemed a part of the obligations secured hereby.
11. The Buyer hereby authorizes and appoints Eagle as the Buyer's attorney in fact, to do any act which the Buyer is obligated to do under this Contract of Sale and to exercise rights hereunder which the Buyer is entitled to exercise and to sue or assign the collateral in the manner in which the Buyer may use or assign it. In addition, the Buyer authorizes Eagle as a secured party to collect proceeds from the sale of collateral in the same manner that the Buyer may collect proceeds. The parties understand and agree that this authorization and appointment of Eagle as a secured party as Buyer's attorney in fact is given to Eagle to enable it to protect and preserve its rights under this agreement. The Buyer agrees to reimburse Eagle for all expenses which it incurs while acting as the Buyer's attorney in fact.
12. Eagle agrees that goods shipped under this Contract of Sale to Buyer will be produced in compliance with the Fair Labor Standards Act and represents that the goods covered by this order were not manufactured and are not being sold or priced in violation of any federal, state or local law.
13. Any taxes, duties or other charges imposed on these goods by any governmental entity shall be paid by Buyer in addition to the aforementioned purchase price.
14. This Contract of Sale shall be governed, construed and interpreted according to the laws of the State of New York.
15. Acceptance by the Buyer of goods under this Contract of Sale shall be deemed to be the Buyer's consent to the venue and the exercise of jurisdiction over the person of the Buyer and/or agents by the Federal District Court for the Northern District of New York, and/or the Supreme Court, County of Onondaga, State of New York.
16. The Buyer hereby expressly agrees that any arrearages claimed to be due and owing to Eagle, under any prior agreements between Buyer and Eagle shall be included as part of moneys due and owing to Eagle by the Buyer under this Contract of Sale.
17. The Buyer hereby designates The Prentice Hall Corporation System, Inc. ("PH") as its agent for the purpose of accepting service of any process relating to this Contract of Sale. PH is required to notify the Buyer in writing within five (5) business days of any service of process at the address listed by the Buyer in this Contract of Sale. The Buyer further agrees to notify PH, in writing, of any change in the Buyer's address. Designation of PH for service of process by the Buyer shall be given the same force and effect as if the Buyer was personally present and served with process in New York State.