

General Terms and Conditions

DATRON DYNAMICS, Inc. TERMS AND CONDITIONS OF SALE:

1. **TERMS EXCLUSIVE:** This document, together with the agreements, if any, specified herein, and including the terms and conditions accepted and agreed to by DATRON Dynamics, Inc. ("Seller") in the quotation and/or invoice, constitutes the complete, exclusive and final agreement of the Buyer identified therein ("Buyer") and Seller and may not be added to, modified, superseded or altered except by written agreement or modification signed by Seller's authorized representative, notwithstanding any other additional or modifying terms or conditions which may now or in the future appear on Buyer's acknowledgement or other forms (all of which are objected to by Seller without future notification), and notwithstanding any shipments, tenders or delivery, acceptance or payments, or other similar acts of Seller. Notification of objection to additional (or different) terms is given hereby. Buyer's acceptance of any performance by Seller shall be taken as Buyer's acceptance of these terms and conditions.

NO PERSON (EXCEPT AN OFFICER OF SELLER) IS AUTHORIZED TO BIND SELLER TO ANY ORDER EXCEPT ACCORDING TO THE TERMS AND CONDITIONS HEREOF.

2. **DELIVERY:** Unless otherwise specified herein, delivery of the goods, and services, if any, specified herein ("Goods") will be F.O.B. U.S.A. point of shipment. Any delivery date specified herein is approximate only. Acceptance of shipment by a common carrier, designated shipper or licensed public truckman, allocation of Goods to Buyer at premises other than Seller's, delivery to Buyer's representative or designee (if Seller's trucks and drivers effect such delivery), or mailing of an invoice by Seller to Buyer, whichever of the foregoing first occurs, shall constitute tender of delivery. Upon receipt of payment in full, title shall pass to Buyer, subject to Seller's right of stoppage in transit and to any interest of Seller reserved to secure Buyer's payment or performance. In the instance of Goods held subject to Buyer's instructions or Goods for which Buyer has failed to supply shipping instructions, Seller may invoice Buyer for the Goods and Buyer agrees to make payment at the maturity of the invoice so rendered. Goods invoiced and held at any location, for whatever reason, shall be at the Buyer's risk and Seller may charge for (but is not obligated to carry) insurance and storage at prevailing rates. Buyer will accept and pay for partial deliveries in accordance with contract prices and terms. If Buyer has expressed an intention not to accept delivery in accordance with any order, no tender of the Goods shall be necessary but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver and such notice shall constitute a valid tender of delivery.

3. **PRICES:** All prices of the goods are subject to change; however, any unexpired quotes will be honored. Unless otherwise stated by Seller, prices and pricing policies will be those set forth in Seller's published price lists or Seller's pricing policies in effect at time of shipment. In the event buyer's order is changed in any respect (if and when permitted by Seller), Seller may adjust the price accordingly. Unless otherwise specified herein, prices do not include applicable taxes, excises, duties, quotation fees or other governmental impositions which Seller may be required to pay or collect under any existing or future law, and any such additional charge shall be paid by and/or for the account of Buyer.

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4. PAYMENT, SECURITY INTEREST: If the terms of payment include any discount for prompt payment, such discount terms shall be strictly enforced by Seller. If there is no specific contrary agreement upon terms of payment stated herein, payment shall be due and payable within 10 days of the date of the invoice. Any payment not made to Seller when due shall be subject to a carrying charge of two percent (2%) per month on the unpaid balance until paid. Buyer shall have no right to offset any amount whatsoever against any payment or other obligation which buyer may owe to Seller under the terms hereof. Seller reserves the right to charge a 3% processing fee to the buyer for any transactions exceeding \$20,000 paid via credit card. Seller reserves a security interest in the Goods to secure Buyer's payment of the purchase price and any other charges owed by Buyer, and Buyer agrees that Seller may (but is not obligated to) take such action as Seller deems advisable to evidence and perfect such interest and that Buyer will cooperate with Seller in the taking of such actions including, without limitation, the signing by Buyer of financing statements.

5. CASUALTY AND AVAILABILITY OF SUPPLIES: Delivery of all or any part of the Goods is contingent upon Seller's ability to obtain the Goods, other goods, supplies, raw materials and services through its regular and usual sources of supply. If by reason of any contingency beyond Seller's control, including (but not limited to) war, governmental requests, restrictions or regulations, fire, flood, casualty, accident, or other acts of God, strikes or other difficulties with employees, delay or inability to obtain goods including the Goods), labor, equipment, material and service through Seller's usual sources, failure or refusal of any carrier to transport materials, delay in transport thereof, or any other similar occurrence, Seller is not able to meet anticipated deliveries, Seller shall not be liable therefore and may, in its discretion without prior notice to Buyer, postpone the delivery date(s) under this document for a time which is reasonable under all the circumstances.

6. INSPECTIONS, ACCEPTANCE, AND RETURNS: Each delivery shall be inspected by Buyer for observable damage and/or nonconformity at the time of delivery. Failure to so inspect shall constitute a waiver of Buyer's rights of inspection and shall constitute an unqualified acceptance of the Goods. If, after such inspection, Buyer attempts to reject any Goods, Buyer shall fully specify all claimed damage or non-conformity in a notice of rejection sent to Seller within ten days of Buyer's receipt of the Goods. Buyer's failure to so specify shall constitute an unqualified acceptance of the Goods and a waiver of that damage or non-conformity. No Goods shall be returned to Seller without Seller's prior written agreement and any Goods returned by Buyer shall be returned in the same condition as when delivery was effected by Seller. Seller reserves the right to assess a return or restocking charge for Goods returned for reasons other than damage or non-conformity. Remanufactured parts qualify for an exchange program more particularly set forth in Exhibit A.

7. LIMITED WARRANTY, WARRANTY DISCLAIMERS AND LIMITATIONS OF REMEDIES AND LIABILITIES: Seller warrants that: (i) the Goods which are manufactured by DATRON AG be free from defects in materials and workmanship for a period of one year after delivery of the Goods, and (ii) Software of DATRON Electronic GmbH to be free from errors for a period of one year after delivery, with upgrades of such software supplied free of charge within said one-year period, with exception of parts in the exchange program. Errors in such software discovered within the one-year period will be corrected free of charge only if Seller receives written notice thereof from Buyer no later than 30 days after the end of said one-year period.

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Any Goods determined by Seller to be defective at time of delivery will be repaired or replaced, at Seller's option, provided Buyer has acted in accordance with Paragraph 6 thereof. No item shall be deemed defective if such item conforms to approval models, samples or previously accepted items or if such item fits Buyer's products, parts, jigs, or equipment or otherwise reasonably accommodates Buyer's intended purpose. Seller does not warrant against failures caused by erosion, corrosion, misuse or improper use, including but not limited to any operation beyond rated capacity, improper use of application of the Goods, use of the Goods not in compliance with service manuals and instructions, use of the Goods by untrained or unqualified persons, substitution of parts not approved by Seller or any alteration or repair by others which, in the judgment of Seller, adversely affects the Goods. Except as set forth above, Seller makes NO OTHER WARRANTIES concerning the Goods whatsoever. SELLER DISCLAIMS AND EXCLUDES MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE concerning the Goods. Buyer acknowledges and agrees that Seller's obligation described in this Paragraph 7 is the sole remedy bargained for by Buyer IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES. In no event will Seller's liability exceed the paid purchase price of the Goods. Seller's obligations described in this Paragraph shall be BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR ANY LIABILITY WITH RESPECT TO THE GOODS WHETHER ANY CLAIM FOR THE RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OR CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE. Buyer agrees that NO OTHER REMEDY SHALL BE AVAILABLE to Buyer and that IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, including without limitation loss of income, loss of time, loss of sales, cost or replacement items, claims asserted by Buyer's customers, injury to personal property, or injury to any person, whether or not occasioned by Seller's negligence. No accommodation by Seller to Buyer establishes any additional liability of Seller or any contract term inconsistent with the terms herein.

8. CANCELLATION: Seller may cancel or terminate all or part of the contract arising from or evidenced by this document immediately upon the happening of any of the following: Buyer's material delinquency of any of its obligations hereunder or with respect to any other order or transaction with Seller; the insolvency of Buyer; the appointment of a receiver under Title 11 U.S.C., as amended (the "Bankruptcy Code"), or the commencement of a case under any chapter of the Bankruptcy Code for, by or against Buyer; Buyer's suspension or termination of business or assignment for the benefit of creditors; or any event, whether or not similar to the foregoing, which in Seller's good faith belief materially impairs the prospect of payment or performance by Buyer hereunder. Seller's rights to cancel or terminate herein may be exercised by Seller without liability.

9. STATUTORY COMPLIANCE: Seller continues to attempt to comply with all applicable laws, standards and specifications. However, Seller is not responsible for compliance with any laws, standards or specifications applicable to the Goods, their delivery, use, handling, labeling, transportation or disposal, whether of general or particular application, unless Buyer has furnished specific written notice thereof prior to Seller's entry of Buyer's order and the President of Seller acknowledges in writing receipt and acceptance as a part of the order such law, standard or specification.

10. PRODUCT LABELS, INFORMATION: Buyer acknowledges that it has received and is familiar with Seller's and any manufacturer's labeling and literature concerning the Goods and will forward such information to its employees, agents and customers.

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11. PERMISSIBLE VARIATIONS: Seller has the right, without giving notice to Buyer, prior to the delivery of Goods to Buyer to make any changes in the composition of the Goods which, in the opinion of the Seller, does not affect the general characteristics or properties of the Goods. In addition, Seller may make any change or variation in the Goods which is within government or industry standards or specifications applicable at the time of manufacture without giving notice to the Buyer. Buyer will accept any Goods which may incorporate any changes in the composition or specifications, and any increase in price resulting from such change will be paid by Buyer.

12. PATENTS, ETC.: Buyer will defend, indemnify and hold harmless Seller, its successors and assigns, from and against any and all claims, demands, lawsuits, liability and judgment for loss, costs, damages, fines, penalties and expenses of every kind and nature, threatened, incurred, arising out of or in connection with any alleged infringement of any United States patent by any Goods supplied by Seller hereunder and made specially for Buyer; provided that Seller shall give prompt notice to Buyer of any such claim, etc., and an opportunity to settle or defend the same as Buyer may see fit; and provided further that Seller shall render every reasonable assistance which Buyer may require of its connection with such claim, etc. Seller reserves the right to cancel this order, without liability with respect to any Goods, the manufacture, sale and use of which in the opinion of Seller would infringe any patents now or hereafter issued.

13. REPRESENTATIONS BY AGENT OR REPRESENTATIVE: The terms of this document shall govern the liability and obligations of Seller in regard to the sale of Goods, whether the sale was procured directly by Seller or indirectly through an authorized sales representative. No agent, employee or representative of Seller has any authority to bind Seller to any additional or contrary affirmation or representation concerning the Goods sold under this document. Unless an affirmation or representation is specifically included within this document or is in writing signed by an officer of Seller, it shall not be enforceable by Buyer or by any person claiming by or through Buyer.

14. MISCELLANEOUS: All sales are subject to approval by Seller's credit department. Orders entered on Seller's books cannot be countermanded nor deliveries deferred except with Seller's written consent and upon terms that will indemnify Seller against all loss. The contract arising hereunder will be governed by the local laws of the State of New Hampshire. If any of the provisions hereof shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

No right or interest in the contract arising from this document shall be assigned by Buyer and no delegation of any obligation owed by Buyer shall be made without the prior written permission of Seller. The individual rights and remedies of Seller reserved herein shall be cumulative and additional to any other or further remedies provided in law or equity. Waiver by Seller of performance or inaction with respect to Buyer's breach of any provision hereof, or failure of Seller to enforce any provision hereof which may establish a defense or limitation of liability, shall not be deemed a waiver of future compliance therewith or a course of performance modifying such provision, and such provision shall remain in full force and effect as written.

As used herein, "Buyer" and "Seller" includes the respective heirs, executors, personal representatives, successors and permitted assigns of each.

IN ALL CASES CLERICAL ERRORS ARE SUBJECT TO CORRECTION.