

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS:** The term "Seller" shall mean DATEL Inc., located in Mansfield, Massachusetts. The term "Products" shall mean those products of the Seller Referenced on a quotation. The term "Buyer" shall mean the party referenced on a quotation to which the products are being sold or offered for sale.
2. **ACCEPTANCE OF ORDERS:** THE ACCEPTANCE OF ALL ORDERS AND ALL SALES BY THE SELLER ARE MADE SUBJECT TO AND CONTINGENT UPON THESE TERMS AND CONDITIONS. ANY OF BUYER'S TERMS AND CONDITIONS WHICH ARE DIFFERENT FROM OR IN ADDITION TO THOSE CONTAINED HEREIN IS HEREBY OBJECTED TO AND SHALL BE OF NO EFFECT UNLESS SPECIFICALLY AGREED TO IN WRITING.
3. **PRICE:** Unless otherwise stated on the face of Seller's Quotation, all prices quoted by Seller expire thirty (30) days after the date of the Quotation. All prices quoted are valid only if Buyer's requested delivery date is within twelve (12) months following the date on which Buyer's order is placed.
4. **TAXES:** All prices are exclusive of all present or future federal, state, or local excise, sales, user and similar taxes. These taxes shall be paid by Buyer or Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.
5. **PAYMENT:** Unless Seller has extended credit to Buyer, Buyer shall pay Seller at Seller's option, either by: Cash with Order, C.O.D., Letter of Credit or Sight Draft. Any banking fees incurred by the Seller are for the account of the Buyer. Should Seller elect to extend credit to Buyer, Payment shall be made in full within thirty (30) days of the date of Seller's invoice. Seller reserves the right at any time to change the amount of or to withdraw any credit extended to Buyer. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Buyer shall be liable for all collection costs (including attorneys fees) incurred by Seller in connection with past due payments.
6. **TITLE AND DELIVERY:** Seller shall deliver Products to Buyer F.O.B. Seller's factory. Partial deliveries shall be permitted. Upon such delivery to a carrier at Seller's factory, title to the Products and all risk of loss or damage shall pass to Buyer.
7. **SHIPMENT:** All shipping charges and expenses shall be paid by Buyer. Seller will not insure the Products unless requested by Buyer in which case Buyer will pay for such insurance.
8. **WARRANTY:** Seller warrants to Buyer that Seller's Products shall be free from defects in material and workmanship and shall conform to the applicable specification, if any, for a period of one year from the date of shipment. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** The limited warranty does not cover normal wear and tear of the product, including misuse, neglect, improper installment, or physically damaged units. Only if DATEL is notified of a defect within 1 year from the date of sale, shall warranty apply. The limited warranty is non-transferable. The above warranty shall apply only to Buyer and shall not apply to Buyer's customers or any other third parties. Should products fail to meet the above warranty, Seller, at its discretion, shall repair or replace such Products free of charge, provided that (i) Seller is notified in writing by Buyer within thirty (30) days after discovery of such failure; (ii) Buyer obtains a Return Material Authorization (RMA) from Seller prior to returning any defective Products to Seller; (iii) the defective Products are returned to the location specified by Seller; (iv) the defective Products are received by Seller no later than four (4) weeks following the last day of the warranty period; and (v) Seller's examination of such Products shall disclose, that such failures are within the scope of this limited warranty, and that such failures have not been caused by improper installation or application, repair, alteration accident or negligence. DATEL will, at its discretion, use new and/or reconditioned parts in performing limited warranty repairs and building replacement products. DATEL owns all replaced products and all parts removed from repaired products. DATEL limited warranty does not cover the cost of removal, installation or troubleshooting of the owner's electrical system or any repairs done to the product by parties other than DATEL or any of its authorized service centers. Once DATEL has repaired or replaced the product, the warranty period is not extended, and only the original limited warranty applies. Upon the expiration of the applicable warranty for any Products, all such liability shall terminate. In no event will DATEL be liable for any special, direct, indirect, incidental, or consequential damages, losses, or expenses however arising whether in contract or tort including without restriction any economic losses of any kind, any loss or damage to property, any personal injury, any damage or injury arising from or as a result of misuse or abuse or incorrect installation, integration or operation of the product. The foregoing warranty provisions set forth the Seller's sole liability and the Buyer's exclusive remedies for claims (except as to title) based on defects in or failure of any Products whether a claim is based on contract, tort, (including negligence), warranty or otherwise and however instituted. There shall be no other remedy against DATEL for breach of warranty.
9. **LIMITATION OF THE USE OF THE PRODUCTS:** Seller's Products are not designed for and should not be used within Life Support Systems, Nuclear Facility, Transportation or Traffic Signal Equipment applications. Such Products may not be sold for such applications without the prior specific written consent of Seller. A Life Support System is defined as a product or systems intended to support or sustain life and which if it fails can be reasonably expected to result in significant personal injury or death. Nuclear Facility applications are defined as any application involving a nuclear reactor or any facility involved in any way with the handling or processing of radioactive materials and in which the failure of equipment in any way could reasonably result in harm to life, property or the environment.
10. **GENERAL LIMITATIONS OF LIABILITY:** (a) IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL SELLER BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF GOODWILL, CLAIMS OF BUYER'S CUSTOMERS OR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY NATURE. (b) Except as provided in the "Patents" clause below, whether a claim is based on contract, tort (including negligence) or otherwise, the Seller's liability for any loss or damage arising out of any Products shall in no case exceed the price of the specific order to which the claim relates. Except as to title, any such liability shall terminate upon the expiration of the warranty period specified in the foregoing "Warranty" clause.
11. **INDEMNITIES:** Buyer shall defend and indemnify Seller from all liabilities and costs resulting from any suit or proceeding based upon a claim that products infringe upon the rights of a third party to the extent such claim arises from Seller's compliance with Buyer's designs, specifications or instructions.
12. **PATENTS:** (a) With respect to Products manufactured solely to Seller's designs and specifications, Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that such products infringe any U.S. patent provided Seller is notified promptly in writing of such suit or proceeding and is given complete authority, information, and assistance by Buyer for such defense. Seller shall pay all damages and costs finally awarded against Buyer in any such suit or proceeding, but Seller shall not be responsible for any compromise thereof made by Buyer without Seller's written consent. If such Products are held in such suit or proceeding to constitute infringement and their use is enjoined or if in the opinion of Seller such Products are likely to become the subject of a claim of infringement, Seller may either: (i) procure for Buyer the right to continue using such Products; or (ii) modify such Products so that they become non-infringing; or (iii) replace such Products with non-infringing Products; or (iv) accept the return of such Products, granting Buyer a refund equal to the purchase price. (b) Seller shall have no liability to Buyer if any patent infringement or claim is based upon (i) a modification of the Products not approved by Seller or (ii) the interconnection devices not made by Seller or (iii) the use of the Products in other than an application recommended by the Seller. (c) The above states Seller's sole liability for infringement of patents by Seller's Products.
13. **EXCUSABLE DELAYS:** Seller shall not be liable for delay or failure to deliver or perform due to any cause beyond its reasonable control, including, without limitation, Acts of God, acts of Buyer, strikes or other labor disturbances, inability to obtain necessary materials, components, services or facilities.
14. **U. S. GOVERNMENT CONTRACTS:** If the Products are to be used in the performance of a U.S. Government contract or subcontract, no Government requirements or regulations shall be binding upon Seller unless specifically agreed to in writing.
15. **CANCELLATION/RESCHEDULING CHARGES:** (a) Standard Products (SP), which is described as a standard unchanged catalog / website item: (1) no cancellation, reduction or reschedule will be allowed for any Products due to be shipped within 60 days of the date of request (100% cancellation fee), (2) a 15% cancellation fee will be charged for any Products due to be shipped within 61-90 days of the date of request (\$50 minimum charge). (3) DATEL's actual costs incurred will be charged on any Products due to ship beyond 90 days of the request - min. charge of \$50, and/or 5% of total order. (b) Special Order Products (SOP), described as modified standard products which do not require a board or package change: (1) no cancellation, reduction or reschedule will be allowed on any Products due to be shipped within 120 days (16 weeks) of the date of request (100% cancel fee), (2) a 15% cancellation fee will be charged on any products due to be shipped beyond 120 days of the request. (c) Custom Products (CP), described as products designed or modified specifically for the customer where a board or package needed to be created / changed: **NO CANCELLATION, REDUCTION OR RESCHEDULE WILL BE ALLOWED REGARDLESS OF DATE OF REQUEST. (100% CANCELLATION FEE).**
16. **U. S. EXPORT LAWS:** Seller's obligations are subject to the export administration and control laws and regulations of the U. S. Government. The Buyer shall comply fully with such laws and regulations in the export, resale or other disposition of Products.
17. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CLAUSES OF 41CFR60-1.4 AND 41CFR60-250.4 AND 60-741.1 ARE INCORPORATED HEREIN BY REFERENCE.**
18. **MISCELLANEOUS:** (a) The invalidity, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. (b) Any representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on Seller. (c) No modification, amendment, rescission, waiver or other change in these terms and conditions shall be binding on Seller unless assented to in writing by Seller's authorized representative.