



EFI Electronics Standard Conditions of Sale

NOTE: The following Conditions of Sale are subject to change. All transactions for products sold by EFI Electronics Corporation are subject to the latest published Conditions of Sale of the EFI Electronics Corporation and to any Special Conditions of Sale which may be contained in applicable EFI quotations and acknowledgments.

1. ACCEPTANCE, GOVERNING PROVISIONS, AND CANCELLATIONS. No order for EFI equipment or services shall be binding upon EFI until accepted by a writing of an authorized official of EFI or by shipment or other performance of such order. Any such order shall be subject to these Conditions of Sale, and acceptance shall be expressly conditioned on assent to such Conditions, which assent shall be deemed given unless purchaser shall expressly notify EFI to the contrary prior to any shipment or other performance of an order by EFI and, in any event, within five (5) days after receipt of any acknowledgment or confirmation of such order.

No order accepted by EFI may be altered or modified by purchaser unless agreed to in writing signed by an authorized official of EFI; and no such order may be cancelled or terminated except upon payment of EFI's loss, damage and expense arising from such cancellation or termination. No modified or other conditions will be recognized by EFI unless specifically agreed to in writing and failure of EFI to object to provisions contained in any purchase order or other communication from a purchaser (including, without limitation, penalty clauses of any kind) shall not be construed as a waiver of these Conditions nor an acceptance of any such provisions.

Unless otherwise agreed in writing by a duly authorized representative of EFI, products sold hereunder are not intended for use in or in connection with a nuclear facility or activity. If so used, EFI disclaims all liability for any nuclear damage, injury or contamination, and purchaser shall indemnify EFI against any such liability, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise.

Any contract for sale and these Conditions shall be governed by and construed according to the laws of the state of Illinois. All references to dollars in these Conditions of Sale shall mean U.S. dollars.

2. QUOTATIONS AND PRICES. Written quotations are conditioned upon acceptance by purchaser within thirty (30) days from date issued and shall be considered as offers by EFI to sell during such thirty (30) day period unless sooner terminated by notice. Other EFI publications are maintained as sources of general information and are not quotations or offers to sell.

All prices are subject to change without notice. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at time of order entry; orders not for immediate shipment will be subject to prices in effect on date of shipment.

All clerical errors are subject to correction.

3. PAYMENT TERMS. Applicable terms of payment are stated in quotations or on the price sheet for the product involved.

EFI reserves the right at any time to demand full or partial payment before proceeding with a contract of sale if, in its judgment, the financial condition of purchaser shall not justify the terms of payment specified. If delivery is delayed or deferred by purchaser beyond the scheduled date, payment shall be due in full when EFI is prepared to ship and the equipment may be stored at the risk and expense of

purchaser. If purchaser defaults when any payment is due, then the whole contract price shall become due and payable upon demand, or EFI, at its option, without prejudice to other lawful remedies, may defer delivery or cancel the contract for sale.

4. TAXES AND OTHER CHARGES. Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax (except the Federal excise tax on vehicles), duty, custom, inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between EFI and purchaser, shall be paid by purchaser in addition to the prices quoted or invoiced. In the event EFI shall be required to pay any such tax, fee or charge, purchaser shall reimburse EFI therefor; or, in lieu of such payment, purchaser shall provide EFI at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. Purchase orders must state the existence and amount of any such tax, fee or charge which it shall be EFI's responsibility to collect from purchaser and pay.

5. DELIVERY. Delivery of equipment to a carrier at any EFI plant or other shipping point shall constitute delivery to purchaser; and, regardless of freight payment, title and all risk of loss or damage in transit shall pass to purchaser at that time.

Great care is taken in packing EFI equipment. EFI cannot be held responsible for breakage after having received "in good order" receipts from the transportation company. All claims for loss and damage must be made by purchaser to the carrier.

Claims for shortages or other errors must be made in writing to EFI within 60 days after invoice date, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by purchaser.

Except as may otherwise be stated in quotations, price sheets, catalogs, or other EFI publications, all freight will be FOB EFI factory Salt Lake City, Utah USA.

Method and route of shipment will be at the discretion of EFI unless purchaser shall specify otherwise.

EFI reserves the right to make delivery in installments, unless otherwise expressly stipulated in the contract for sale; and all such installments when separately invoiced shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve purchaser of its obligations to accept remaining deliveries. EFI shall not be liable for any damage as a result of any delay due to any cause beyond EFI's reasonable control, including, without limitation, an act of God; act of purchaser or EFI's supplier; embargo or other governmental act, regulation or request; fire; accident; strike; slowdown; war; riot; delay in transportation; and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

Emergency orders will be routed via premium carrier at purchaser's expense.

6. **SUBSTITUTES.** EFI may furnish suitable substitutes for material unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, and assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the product.

7. **WARRANTY TO CUSTOMERS PURCHASING THROUGH AUTHORIZED EFI DISTRIBUTORS AND CUSTOMERS PURCHASING DIRECTLY FROM EFI.** EFI warrants equipment manufactured by it to be free from defects in materials and workmanship for sixty (60) months, unless otherwise stated in EFI product warranty, from date of invoice from EFI or its authorized sales channel. If within the applicable warranty period purchaser discovers such item was not as warranted and promptly notifies EFI in writing, EFI shall repair or replace the items or refund the purchase price, at EFI's option. This warranty shall not apply (a) to equipment not manufactured by EFI, (b) to equipment which shall have been repaired or altered by others than EFI, (c) to equipment which shall have been subjected to negligence, accident, or damage by circumstances beyond EFI's control, or to improper operation, maintenance or storage, or to other than normal use or service. With respect to equipment sold but not manufactured by EFI, the warranty obligations of EFI shall in all respects conform and be limited to the warranty actually extended to EFI by its supplier. The foregoing warranties do not cover reimbursement for labor, transportation, removal, installation, or other expenses which may be incurred in connection with repair or replacement.

Except as may be expressly provided in an authorized writing by EFI, EFI shall not be subject to any other obligations or liabilities whatsoever with respect to equipment manufactured by EFI or services rendered by EFI. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES EXCEPT WARRANTIES OF TITLE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

8. **LIMITATION OF LIABILITY.** Anything to the contrary herein contained notwithstanding, EFI COMPANY, ITS CONTRACTORS AND SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. The remedies of the purchaser set forth herein are exclusive where so stated and the total cumulative liability of EFI, its contractors and suppliers of any tier, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product or part on which such liability is based.

9. **RETURN OF EQUIPMENT.** No material may be returned without first obtaining EFI's Written Return Material Authorization.

Standard EFI branded product (in current production) accepted for credit, shall be assessed a restocking charge of 25% of the invoice price. Custom built equipment is not returnable. Individual returns, not involving an EFI error, must exceed five hundred dollars (\$500) net each. EFI branded product accepted for credit that requires new packaging shall be assessed a restocking charge of 50% of the invoice price.

Return material must be of current manufacture, in the original packaging, unused, and in resalable condition, securely packed to reach EFI without damage and labeled with return authorization number; any cost incurred by EFI to put equipment in resalable condition will be charged to the purchaser. Credit will be issued on the lowest into stock price paid within the past 12 months, unless an invoice accompanies the request for return. For returns resulting from EFI error, method and route of return will be at the discretion of EFI.

Cost incurred by not following these terms will be borne by the purchaser.

10. **PATENTS.** As to equipment manufactured and furnished by EFI, EFI shall defend any suit or proceeding brought against purchaser so far as based on a claim that said equipment constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information, and assistance at EFI's expense for the defense of the same. In event of a final award of costs and damages, EFI shall pay such award. In event the use of said equipment by purchaser is enjoined in such a suit, EFI shall, at its own expense, and at its sole option, either (a) procure for purchaser the right to continue using said equipment, (b) modify said equipment to render it non-infringing, (c) replace said equipment with non-infringing equipment, or (d) refund the purchase price (less depreciation) and the transportation and installation costs of said equipment. With respect to equipment furnished but not manufactured by EFI, the patent indemnity expressed herein shall in all respects conform and be limited to the patent indemnity, if any, actually extended to EFI by its supplier. EFI will not be responsible for any compromise or settlement made without its written consent.

The foregoing states the entire liability of EFI for patent infringement, and in no event shall EFI be liable if the infringement charge is based on the use of EFI equipment for a purpose other than that for which sold by EFI. As to any equipment furnished by EFI to purchaser and manufactured in accordance with designs proposed by purchaser, purchaser shall indemnify EFI against any award made against EFI for patent, trademark, or copyright infringements.

11. **PATTERNS AND TOOLS.** Notice will be given if special patterns or tools are required to complete any order. Charges for such patterns or tools do not convey title thereto or the right to remove them from EFI's plant. If patterns or tools are not used for a period of two years, EFI shall have the right to scrap them without notice.