

Terms and Conditions of Sale

1. This agreement between Switch Components Inc., ("Seller") and the party indicated on the face hereof ("Buyer") is subject to the following terms and conditions, and to those appearing or specifically referenced on the face hereof, only, and on addition or deletion or other agreement, priorities or covenant proposed by buyer shall become binding upon Seller whether advanced by document, purchase, order, confirmation, or otherwise unless specifically agreed to in a writing executed by seller. Seller hereby gives notification of objection to all terms and conditions heretofore or hereafter proposed by buyer different from or additional to those specified in the Agreement and in no event shall Seller's silence or any other action by seller be construed as Seller's assent to any such different or additional terms and conditions. Buyer's assent to the terms and conditions set forth herein and those appearing or specifically referenced on the face hereof shall be conclusively presumed from Buyer's failure to reasonably and specifically object thereof in writing, or from Buyer's acceptance of delivery of all or any part of the products described on the face hereof being sold to Buyer. Pursuant to Agreement (the "Products") regardless of whether a copy hereof or any other document is signed by Buyer and returned to Seller. The terms and conditions appearing or specifically referenced on the face hereof shall be controlling in the event of any conflict thereof with the terms and conditions set forth herein. No changes, termination, or waiver of any of the provisions of this Agreement shall be valid unless in writing and executed by Seller and no alleged or actual contrary course of conflict shall serve to contradict the express terms and conditions hereof.
2. Unless otherwise specified on the face hereof, all shipments of the products are made F.O.B. Seller's facility in El Cajon, California. Delivery of any of the Products by or on behalf of the Seller or any common carrier or in any other carrier or agent for shipment to Buyer, or such other party as Buyer shall designate, shall be deemed delivery hereof to Buyer for all purposes of this Agreement and, therefore, title to such of the Products and risk of loss thereof including damages or theft in transit, shall be immediately be transferred to and be deemed assumed by Buyer, regardless of freight payment terms and whether shipping agent has been specified by Buyer.
3. Unless otherwise specified on the face hereof, payment shall be made net cash, in U.S. dollars within 30 days from date of shipment (whether in full or partial fulfillment of the Agreement) without selloff of any kind. Any credits or selloffs alleged by Buyer to be due from Seller shall not be deducted from their amounts due Seller, under this or other agreements, until Seller shall have issued and delivered to Buyer, Seller's credit memorandum, authorizing such deduction. To the extent permitted under applicable law, pass due amounts and sums improperly deducted will be subject to a service charge of one and one-half percent ((1 ½%) per month (eighteen percent (18%) per annum)). An invoice may or may not accompany shipment at Seller's option.
4. Seller reserves the right to increase the prices stated herein to the extent that Seller may deem warranted as result of increase of cost of labor, materials, freight rates, or overhead, or because of taxes or other charges imposed by governmental authority upon the production or sale of Products or upon materials used in the manufacture thereof. Price increases shall take effect upon twenty (20) days written notice to Buyer and shall apply to all the products subsequently shipped where such increased prices remain applicable.
5. Seller shall not be liable for or deemed to be in default by reason of any failure to deliver or delay delivery due to any preference, priority allocation or allotment order issued by any governmental body or any other cause beyond its control, including but not limited to, acts of God or public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, inability to obtain materials or shipping space, delays of carriers or suppliers, freight embargoes, unusually severe weather conditions, and delays of any subcontractor.
6. The amount of the present or future sales, use, revenue, or excise or other taxes applicable to the manufacturer, purchase or sale of Products is not included in the purchase price and shall be paid by Buyer.
7. Seller reserves the right to make delivery in installments unless otherwise specified on the face hereof. Such installments to be invoiced when shipped and shall be paid for within thirty (30) days from sale of shipment.
8. Delivery of ten percent (10%) more or less than the quantity of the product specified herein shall constitute fulfillment of the Agreement. Buyer hereby agrees to accept and pay for any excess not exceeding ten percent (10%).
9. Seller's acceptance of this Agreement and the extension of credit by Seller to Buyer for the thirty (30) day period hereunder is based upon. Buyer's representation that the Buyer is solvent and able to pay its debts when they become due and is in sound financial condition. In the event that Buyer becomes insolvent, is unable to pay its debts as they become due, or has an adverse change in financial conditions, or seller has cause to believe that any such event has occurred, regardless of the accuracy of Seller's belief, Seller at its option, may (I) demand payment in full prior to shipment or upon delivery; (II) cancel this Agreement at any time without liability to Buyer; or (III) demand the return of any or all of the products which have been delivered to Buyer but not paid for.
10. Seller warrants that the Products will conform with all pertinent specifications including performance specifications, drawings, and approved sample, and will be free from defects caused by faulty materials and workmanship. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, TO BUYER, ITS CUSTOMERS, OR ANY OTHER USERS OF THE PRODUCTS EXCEPT AS HEREIN STATED, AND SPECIFICALLY SELLER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OF THE PRODUCTS OR TO THEIR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. All claims for alleged defects in the Products shall be deemed waived unless made in writing and delivered to Seller within ten (10) days after acceptance of delivery of the Products by Buyer. SELLER'S SOLE LIABILITY WITH RESPECT TO THE PRODUCTS SHALL BE LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF ANY DEFECTIVE PRODUCTS. SUCH REPAIRS, REPLACEMENT, OR REFUND SHALL BE THE SOLE REMEDY THAT BUYER, ITS CUSTOMERS, OR ANY USERS OF THE PRODUCTS SHALL HAVE AGAINST SELLER WITH RESPECT TO THE QUALITY, PERFORMANCE, OR USE OF ANY OF ITS PRODUCTS. ALL OTHER REMEDIES WHICH BUYER, ITS CUSTOMERS, OR ANY USERS OF THE PRODUCTS MIGHT HAVE AGAINST SELLER, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE RECOVERY OF SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, BEING HEREBY EXPRESSLY EXCLUDED. BUYER HEREBY AGREES TO COMMUNICATE IN WRITING THE TERMS OF THIS SECTION TO ITS CUSTOMERS.

11. Unless otherwise agreed specifically in writing (and not by a printed provision in any business form) all special tools, dies, molds, jigs, and fixtures made or utilized by Seller shall be and remain Seller's property. Should any special tools, dies, molds, jigs, or fixtures be furnished by Buyer to Seller whose lien shall be enforceable by sale or by court action.
12. Buyer hereby agrees to indemnify Seller against all terms or liability, by patent infringement which may result from the production or sale of any of the Products which are manufactured or fabricated in accordance with Buyer's specifications.
13. On products classified as non-standard (units fabricated to individual customer requirements, drawings, specifications, or design as contrasted to standard items offered by Seller for general sale), Seller reserves the right to fabricate the entire quantity ordered in one production run, although shipments are made in accordance with Buyer's requested delivery schedule.
14. This Agreement shall be non-cancelable, except with the prior written consent of Seller. In the event of any cancelation, Buyer shall pay Seller at Seller's option, the following as liquidation damages:
 - a. Invoice price of all products which have identified in this Agreement whether such Products have been delivered to Buyer or not.
 - b. Actual cost incurred by Seller for Products not completed which are allocable to the balance of this Agreement, including the cost of discharging Seller's liabilities which are so applicable, and the costs of materials on hand which were required or produced in connection with this Agreement plus a reasonable allowance for profit in connection with partially finished work and materials.
 - c. A reasonable allowance for profit in connection with Products ordered pursuant to this Agreement but with respect to which production has not yet begun at the time of the cancelation, and
 - d. Reasonable cost incurred by Seller, including accountants' and attorneys' fees, if any in negotiating a termination settlement hereunder.
15. In the event of a default of breach by Buyer in the performance of any of its obligations hereunder, in addition to any and all rights and remedies which Seller shall have against Buyer. Buyer shall be liable to Seller for all costs and expenses incurred by Seller in enforcing its rights hereunder, including with limitation, court costs and attorneys' fees.
16. The remedies of Seller shall be cumulative and in addition to any other legal remedies, No waiver of a breach of any provision of the Agreement between the parties shall constitute a waiver of a continuing or future breach of such provision or of any other provision hereof.
17. This Agreement shall not be assignable by Buyer without the prior written consent of Seller.
18. This agreement shall be construed and enforced in accordance with, and governed by the internal laws, and not the law of conflicts, of the State of California, or any California state court in any action or proceeding arising out of or relating to this Agreement and Buyer irrevocably agrees that all claims and matters in respect to such action or proceeding may be heard and determined in any such output, to the extent permitted by applicable law. Buyer hereby cedes any right to a jury trial in any action arising hereunder. In the event suit is instituted in a United States federal court sitting in the State of California, or any California state court, Buyer hereby waives any right to object to any such filing on venue, forum, non-convenes or similar grounds.
19. Anything to the contrary notwithstanding any action by alleged broach by Seller of this Agreement, including, without limitation an action for the breach of the warranty herein set forth shall be barred unless commenced by buyer within one (1) year after the earlier of (I) the accrual of such cause of action or (II) the date the products in question were first delivered to Buyer.
20. If any of the provision of this Agreement shall be invalid or unenforceable the remainder of this Agreement or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.