

# Terms and Conditions of Sale

1. **ACCEPTANCE:** Unless and until a formal written acceptance upon a printed Order Acknowledgement form is signed by a person authorized by the Seller at an administrative office of the seller, no order will become effective as a valid contract binding upon the Seller. Any provisions or conditions of Buyer's order, which are in anyway inconsistent with, or in addition to, these Terms and conditions (except additional provisions specifying quantity and shipping or billing instructions) shall not be applicable or binding upon Seller.

2. First time purchasers may be required to provide credit information and/or be subject to a credit history check. International orders require a confirmed and irrevocable "Letter of Credit" on a US bank payable at sight.

Unless otherwise stated in the contract, Delaire USA, Inc. will perform acceptance testing at its facilities using Delaire USA, Inc. standard test procedures. Buyer may witness acceptance tests on a non-interference basis.

3. **PRICE:** Seller reserves the right to change or withdraw prices for the products it offers for sale without prior notice, subject to validity conditions set forth in quotations and/or contracts. All currency is US dollars unless specified otherwise.

4. **TAXES:** All prices are exclusive of all sales, use and other taxes or charges. The amount of any present or future sales or use taxes or other charges imposed on or measured by any transaction between Buyer and Seller shall be added to the prices quoted or invoiced and shall be paid by Buyer, except those taxes or charges specifically itemized and included in the total price on the face hereof; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the authorities imposing the same.

5. **PAYMENT:** Unless otherwise specified herein, subject to approval by Seller of amount and Terms, buyer shall make final payment of the purchase price not later than the thirtieth day after shipment (net 30 days). If Buyer delays shipment, payments are to be made as though shipment has been made as specified. Overdue payments will carry 18% per annum interest charges, or the legal maximum rate, whichever is lower. Buyer shall pay Seller's collection or litigation expenses, including attorney fees. If, in the judgment of Seller, the financial condition of buyer at any time does not justify continuance of production or shipment on the terms of payment originally specified, Seller may, upon ten (10) days notice, require full or partial payment in advance, regardless of the payment terms originally specified. In the event of bankruptcy or insolvency of Buyer, Seller may cancel any order then outstanding and receive reimbursement force its cancellation charges.

**PAYMENT OF SELLER'S INVOICES BY PURCHASER SHALL NOT BE DELAYED, OR CONTINGENT UPON, APPROVAL OR PAYMENT BY PURCHASER'S CUSTOMER OR ANY OTHER THIRD PARTY.**

Each shipment shall be considered a separate and independent transaction and payment therefore made accordingly. Seller reserves the right to ship its order and make collection by sight draft, with the Bill of Lading attached.

6. **LIMITED WARRANTY:** Seller warrants the items ordered hereunder at the time of shipment to be free from defects in material, workmanship, and to conform to the contract specifications. Seller's liability under this warranty shall terminate twelve (12) months after date or in accordance with contract stipulations (the "Warranty Period").

To make a claim under this Warranty, notice of any defects shall be given to Seller in writing upon discovery, so long as such notice is within the Warranty Period and Seller shall promptly correct such defects by repair or replacement, at its option, without charge, either FOB Seller's plant or service in the field.

**SPECIFICALLY EXCLUDED FROM THE TERMS OF THIS WARRANTY ARE DEFECTS OR NON-CONFORMANCE CAUSED BY AND RESULTING FROM IMPROPER APPLICATION, OPERATION, MISUSE, UNAUTHORIZED REPAIR, MAINTENANCE OR STORAGE OF THE PRODUCT.**

**ALSO EXCLUDED ARE ITEMS OF CHARACTERISTICALLY INDETERMINATE LIFE, SUCH AS BULBS, FUSES, ETC.**

**THERE ARE NOT WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE, HEREOF. THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING ITEMS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).**

7. **LIMITATION OF REMEDY:** Seller shall not have any liability of any kind under this contract unless Buyer gives Seller notice of its claim within 30 days after the date Buyer knows or should know of its claim and such notice is within the Warranty Period. IN NO EVENT SHALL THE STATUTE OF LIMITATIONS EXCEED ONE YEAR FROM THE DATE OF DELIVERY.

**IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE COST OF THE REPAIR OR REPLACING SUCH DEFECTIVE ITEM AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES, HOWSOEVER CAUSED AND WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE (INCLUDING LATE DELIVERY OR LATE PERFORMANCE).**

**SELLER'S OBLIGATION TO REPAIR OR REPLACE PRODUCT (OR PERFORM SERVICES AGAIN) IN ACCORDANCE WITH WARRANTY SHALL BE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY OR FOR NEGLIGENCE. IF SELLER FAILS TO REPAIR OR REPLACE (OR PERFORM SERVICES AGAIN) AS AFORESAID, SELLER'S ENTIRE LIABILITY TO BUYER SHALL NOT EXCEED THE REPAIR OR REPLACEMENT VALUE, WHICHEVER IS LOWER, OF THE DEFECTIVE ITEM OR SERVICE.**

8. **DISTRIBUTION DISCLAIMER:** Distributed materials and products are provided "as is" without any express or implied warranty of any kind, including warranties of merchantability, non-infringement of intellectual property, or fitness for any particular purpose. In no event shall Delaire USA, Inc. or its suppliers be liable for any damages whatsoever (including, without limitation, damages for lost of profits, business interruption, or loss of information) arising out of the use of or inability to use the materials or products, even if Delaire USA, Inc. has been notified of the possibility of such damages.

9. **INSPECTION:** Seller reserves the right for controlled access to its facilities. If access is granted, it shall be in accordance with Seller's regulations for source inspectors and shall be limited to surveillance of acceptance testing of end items in non-proprietary areas after their assignment to Buyer's order or contract.

10. **PACKING AND SHIPPING:** Prices are quoted exclusive of shipping charges. Unless otherwise specified, product shall be shipped in standard commercial packaging. When special or export packaging is required or requested, the cost of the special packaging will be separately invoiced. Unless otherwise stated, the FOB point is 1913 Atlantic Avenue, Manasquan, NJ 0873.

11. **RESPONSIBILITY AND TITLE:** Buyer assumes all responsibility for and risk of loss of, or damage to, the product during shipment and upon delivery at Seller's shipping point, or FOB point specified in the contract, notwithstanding the fact that Seller may have selected the carrier. Title to and right of possession of the product remains with Seller until payment of the purchase price in full. If payment is delayed, Buyer, if requested by Seller, shall execute and deliver to Seller a security agreement or other documents sufficient to enable Seller to comply with applicable laws.

Buyer hereby authorizes Seller, or its assignee where permitted by applicable law, to sign and file financing statement in order to protect the security interest of Seller hereunder. If Buyer causes a delay in contract completion, Buyer shall pay Seller's usual storage charges and the contract prices thirty (30) days after receipt of Seller's notice that the items sold are ready for shipment. Risk of loss shall pass to Buyer as of the date Seller receives Buyer's postponement request.

12. **EXPORT CONTROL:** The sale, resale or other disposition of Products and any related technology or documentation are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Products to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

13. **RETURN POLICY:** All claims must be made within ten (10) days of receipt of goods. No merchandise will be accepted without written authorization and must be returned within thirty (30) days of receipt of goods. ECOs and Design changes are billable for time and material.

14. **CONTINGENCIES (FORCE MAJEURE):** Seller's obligations hereunder are subject to delays incident to: labor difficulties, casualties and accidents, acts of the elements, acts of the public enemy, transportation difficulties, governmental regulations, and any other causes of delay and/or shipment or delivery of Goods beyond Seller's control. Sales and shipments to be made are subject to Seller's ability to obtain equipment, materials or qualified labor and Seller may apply or prorate shipment of its products to or among its customer as in its judgment is reasonable in the circumstances. Seller shall give Buyer notice of delays, non-delivery or allocation pertinent to Buyer's order. In no event shall Seller be responsible for failure to perform due to unforeseen circumstances, or to causes beyond its control.

15. **CANCELLATION/RESCHEDULING:** Cancellations and/or rescheduling of shipments will be accepted given adequate advanced notification only with the specific written approval of the Seller and shall be subject to cancellation/reschedule charges acceptable to Seller. Required notification period and charges may vary according to the type of class of product. Cancellation charges will be 25% for orders cancelled before they are put into the production schedule. Cancellation charges will be 50% for orders where goods have been procured and kitted for assembly. Cancellation charges will be 75% for orders that are in production. There will also be a 75% restocking fee for cancelled orders in finished goods inventory ready for shipment or goods returned from the Buyer.

16. **SPECIFICATIONS:** If the product performance or utility is not materially and adversely affected, or contract stipulations violated, Seller may modify items sold or their specifications and substitute products of another design. Buyer requested contract changes require Seller's prior written consent and changes will result in fees and/or extension of performance time.

17. **PATENT INDEMNITY:** Seller shall defend any suit or proceeding brought against Buyer so far as based on a claim that any product or any part thereof made to Seller's designs and furnished under this contract constitutes an infringement, in its normal use, or any patent of the United States, on a condition that Buyer shall notify Seller promptly in writing and give Seller authority, information and assistance for the defense of same, and Seller shall pay all damages and costs awarded there in against Buyer. If said product or any part constitute infringement and if the use of said product or part is enjoined, Seller at its expense shall either procure for Buyer the right to continue using said product or part, or modify it so as to become non-infringing, or replace it with a non-infringing, but substantially equivalent product or part, or remove such product or part and refund to Buyer all payments made by Buyer thereon less a reasonable allowance for use, damage and obsolescence. The preceding agreements by Seller in this paragraph shall not apply to any product or any part thereof manufactured to Buyer's designs not to any infringement relating to the use of said product or part in combination with other products not furnished by Seller. The foregoing states the entire liability of Seller for patent infringement by said product or any part thereof.

18. **SALE CONVEYS NO LICENSE:** The sale of products covered by this order does not convey any license, expressly or by implication, estoppel or otherwise, under any patent covering any product, assembly, system, circuit, combination, method or process in which such products may be used, notwithstanding the fact that such products may have been designed for use in, or may in any way be useful in such patented equipment assembly, system, circuit, combination, method or process or may have been purchased and sold for such use. Seller expressly reserves all its rights under such patents.

19. **ASSIGNMENT:** Buyer shall not assign any interest or rights in this contract without prior written consent of the Seller.

20. **GOVERNING LAW:** This contract shall be construed in accordance with the laws of the State of New Jersey, a Uniform Commercial Code State.

21. **ENTIRE CONTRACT:** These Terms and Conditions of Sale and Seller's written quotation constitute the entire contract. This contract represents the entire agreement between parties and shall be incorporated into any order document from Buyer. No amendment shall bind Seller unless in writing and signed by an authorized Seller representative.

22. **HEADINGS:** The headings contained in these Terms and Conditions of Sale are for convenience of reference only and are not intended to have any substantive significance in interpreting this document.

23. **BINDING AGREEMENT:** By executing these Terms and Conditions of Sale, Buyer acknowledges that it is entering into a Binding Agreement and that it has read and understands all provisions of these Terms and conditions of Sale. Buyer further acknowledges that Buyer has had the opportunity to have counsel of its own choosing review these Terms and Conditions of Sale and by executing these Terms and Conditions of Sale, Buyer knowingly waives any rights Buyer may otherwise have under law. Buyer further acknowledges that its authorized officer or agent has executed these Terms and Conditions of Sale on behalf of Buyer and that these Terms and Conditions of Sale have been executed upon Buyer's own free volition. A Purchase Order from the Buyer constitutes execution of these Terms and Conditions.

24. Delaire further does not warrant the accuracy or completeness of the information, text, graphics, links, or other items contained within these materials. Delaire may make changes to these materials or products at any time without notice. Delaire shall not be responsible to update the materials and reserves the right to update this policy as needed.

Part #:	BF8060-00	Date:	04/23/04	Approval:	vpl	ECO#:	000	REV:	000
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