

Meggitt (San Juan Capistrano), Inc terms and conditions of sale

Standard products

1. Definitions

As used in these terms and conditions of sale, the "Seller" is Meggitt (San Juan Capistrano), Inc, and the "Buyer" is the entity issuing the Order. Each product manufactured by Seller and sold hereunder is a "Product." "Quotation" means the terms on any quotation issued by Seller, inviting Buyer to submit an offer. "Order" means the commitment by Buyer which includes the quantity of the Product ordered and the mutually negotiated terms, pricing and delivery. "Accepted Order" means the Order accepted in writing by Seller. "Agreement" collectively means these terms and conditions and each Accepted Order or Quotation to which these terms and conditions apply. "Herein," "hereunder," and "hereof" and other similar expressions refer to this Agreement. "Software" refers only to the object code version of software and not the source code. "Intellectual Property" or "Intellectual Property Rights" collectively means any and all patents, copyrights, database rights, trademarks, trade secrets, mask works, moral rights, know-how or any other proprietary right, and any applications for the foregoing, under the laws of the United States, any other jurisdiction, the European Union, or any other bilateral or multilateral treaty regime. Notwithstanding anything to the contrary express or implied herein, all references herein to the "sale" or "purchase" of any technology or Intellectual Property only means the sale or purchase of a license to use such Intellectual Property, or the Intellectual Property underlying such technology, pursuant to this Agreement. "Section" refers to sections in these terms and conditions. "Including" means "including without limitation." "Days" means "calendar days," unless otherwise stated. All definitions in this Agreement apply to both their singular and plural forms, as the context may require.

2. Acceptance and agreement

EXCEPT FOR AN ORDER WHICH SPECIFIES ONLY (I) QUANTITY AND (II) REQUESTED DELIVERY TERMS AND IS PART OF AN ACCEPTED ORDER, NO OTHER TERM WHICH DIFFERS FROM OR ADDS TO THESE TERMS AND CONDITIONS, SHALL BE BINDING UPON SELLER. Retention by Buyer for over fifteen (15) days of any Product delivered by Seller shall be conclusively deemed acceptance of such Product by Buyer. This Agreement constitutes the sole, final and entire agreement between Seller and Buyer and supersedes all other prior or contemporaneous agreements between them, whether written, electronic or oral, regarding the subject matter hereof. ONLY ACCEPTED ORDERS SHALL BE BINDING UPON BOTH SELLER AND BUYER.

3. Changes

Buyer shall have the right, within no less than sixty (60) days before any scheduled Product shipment, to change applicable Product quantities, delivery schedules, and methods of shipment and packaging. If such changes affect the cost or time required for performance, Seller shall so notify Buyer, and a payment adjustment for the affected Product shipment shall be made as reasonably determined by Seller. No modification of the Agreement shall be binding upon Seller unless it is in writing and signed by an authorized representative of Seller.

4. Warranty and remedy

A) EACH PRODUCT IS WARRANTED TO CONFORM TO ITS PUBLISHED SPECIFICATIONS FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE OF FIRST SHIPMENT OR THE MINIMUM PERIOD REQUIRED BY APPLICABLE LAW, WHICHEVER IS LONGER (THE "LIMITED WARRANTY"). THE WARRANTY PERIOD FOR IN-WARRANTY PRODUCT RETURNED FOR REPAIR OR REPLACEMENT IS NINETY (90) DAYS FROM THE DATE OF RETURN SHIPMENT OR UNTIL THE END OF ORIGINAL WARRANTY PERIOD, WHICHEVER OCCURS LATER. (FOR PRODUCT THAT IS RETURNED UNDER WARRANTY AND IS TESTED AND NO FAULT FOUND, SELLER WILL BE ENTITLED TO REIMBURSEMENT FROM BUYER OF THE TESTING AND EVALUATION CHARGES.) THE WARRANTY PERIOD FOR OUT-OF-WARRANTY PRODUCT RETURNED FOR REPAIR OR CALIBRATION IS NINETY (90) DAYS FROM THE DATE OF RETURN SHIPMENT FROM SELLER.

(B) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES IN SECTION (A) HEREIN, TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE) IN CONNECTION WITH ANY PRODUCT. SELLER ASSUMES NO LIABILITY FOR FAULTY OR IMPROPER APPLICATION OR USE OF ANY PRODUCT OR USE THEREOF WITH ANY OTHER PRODUCT.

(C) ALL WARRANTY CLAIMS MUST BE MADE IN WRITING TO SELLER DURING THE APPLICABLE WARRANTY PERIOD AND THE PRODUCTS CLAIMED DEFECTIVE MUST BE RETURNED BY BUYER TO SELLER AT SELLER'S PLANT. ALL PRODUCTS RETURNED FOR WARRANTY MUST BE ACCOMPANIED BY A WRITTEN EXPLANATION OF PRODUCT FAILURE. SELLER WILL REPAIR OR REPLACE, AT ITS OPTION, ANY DEFECTIVE PRODUCTS AND RETURN THE REPAIRED OR REPLACEMENT PRODUCTS TO BUYER WITHOUT CHARGE. SUCH REPAIR OR REPLACEMENT SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE AND EXCLUSIVE LIABILITY FOR DEFECTIVE PRODUCTS. SELLER'S WARRANTIES SHALL NOT BE ENLARGED OR AFFECTED BY, AND

NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF SELLER'S ADVICE OR SERVICE IN CONNECTION WITH ANY ORDER OR PRODUCT.

SELLER WILL NOT ISSUE CREDIT FOR PRODUCTS RETURNED MORE THAN THIRTY (30) DAYS FROM THE DATE OF PRODUCT SHIPMENT TO BUYER BY SELLER. SELLER SHALL ASSESS A RESTOCKING CHARGE ON ALL PRODUCTS RETURNED, SUCH CHARGE TO BE 25% OF THE SALES PRICE.

(D) NOTWITHSTANDING ANYTHING ELSE HEREIN, SELLER SHALL NOT BE LIABLE UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY PRODUCT, UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE OR STRICT LIABILITY): (I) FOR ANY AMOUNT EXCEEDING THE AMOUNT PAID BY BUYER TO SELLER FOR THE SPECIFIC PRODUCT (ITEM) GIVING RISE TO SUCH LIABILITY; (II) FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR (III) ANY LOST PROFITS, LOST OPPORTUNITY OR LOST REVENUE, WHETHER CHARACTERIZED AS DIRECT DAMAGES OR OTHERWISE.

(E) CERTAIN JURISDICTIONS LIMIT OR DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR LIABILITY. SECTIONS (B), (C) OR (D) HEREIN, THEREFORE MAY NOT IN WHOLE OR IN PART APPLY TO BUYER. TO THE EXTENT THAT ANY LIMITATION OR EXCLUSION OF LIABILITY OR WARRANTY SHALL APPLY, IT SHALL BE LIMITED TO THE LEAST EXTENT POSSIBLE UNDER APPLICABLE LAW.

5. Title and delivery

Products shall be delivered FCA (Incoterms 2000) Seller's facility at San Juan Capistrano, California, unless otherwise agreed in writing by Seller. Title and liability for loss or damage shall pass to Buyer upon Seller's tender of the Products to a carrier for shipment to Buyer. If loss or damage occurs during shipment, Buyer shall not be relieved of obligation to pay costs of insurance, transportation, import duties, taxes or any other expenses incurred for licenses or clearances required at port of entry and destination. When Seller is to deliver the Products in installments, shipping dates shall be approximate only, and Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified delivery schedule because of unavoidable production or other delays. A security interest in the Products shall be retained by Seller until receipt of payment in full from Buyer.

6. Contingencies

Seller shall use commercially reasonable efforts to meet Buyer's requested delivery schedule; however, Seller shall not be liable for any delay in delivery.

7. Cancellation

Accepted Orders may not be cancelled except upon Seller's written approval, which shall be subject to Buyer's payment of Seller's reasonable cancellation charges. Such charges may include all reasonable costs incurred by Seller in preparing to meet Buyer's anticipated delivery schedule including commitments by Seller to its suppliers, and the cost of inventory (raw materials, work in process and finished Products) allocated to Buyer's Order together with a reasonable allowance for termination costs and anticipated profits.

8. General indemnification

Buyer shall defend, indemnify and hold harmless Seller (including its officers, directors, employees and agents) (collectively, the "Seller Indemnitees") from and against any and all claims (including for property damages, personal injury or death), suits, demands, judgments, orders, awards, damages, liabilities, penalties, costs or expenses, including attorney's fees, which may be sustained by any Seller Indemnitee and arise out of or in connection with (i) any breach by Buyer of the Agreement, (ii) any Product, including the use, marketing, advertising or sale of any Product in contravention of this Agreement or the Product's intended purpose or (iii) Buyer's violation of any applicable law, regulation or standard.

9. Medical indemnification

PRODUCTS ARE NOT DESIGNED OR MANUFACTURED FOR CLINICAL USE AND ARE NOT APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION (FDA) FOR CLINICAL OR MEDICAL APPLICATIONS. BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ANY AND ALL CLAIMS, JUDGMENTS, ORDERS, AWARDS, COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES ON ACCOUNT OF BODILY INJURY (INCLUDING DEATH) AND/OR PROPERTY DAMAGES SUSTAINED BY BUYER, BUYER'S EMPLOYEES OR THIRD PARTIES WHICH ARISE OUT OF OR IN CONNECTION WITH THE MEDICAL OR CLINICAL USE OF PRODUCTS.

10. Terms and method of payment

All payments to Seller shall be made solely in US dollars in immediately available funds. Full payment shall be due upon receipt of invoice. If payment is not received within thirty (30) days following invoice date, the late payment will accrue interest from the date due until the date paid at a rate of one and one half percent (1.5%) per month, or the maximum rate allowed under applicable law, whichever is less, on the unpaid balance. Payment shall be made without regard to Buyer's completed inspection of Products. If shipment of a Product is delayed due to Buyer's request, the applicable invoice will be issued and become payable at the time Seller was prepared to make shipment of the delayed Product. Products held by Seller thereafter in compliance with such request are at Buyer's sole risk and expense. 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 specified, Seller may require full or partial payment for any completed delivery prior to shipment of any subsequent deliveries against open Orders or the acceptance of any additional Orders.

11. Taxes

Seller's prices are exclusive of all taxes. Responsibility for all customs duties, charges, sales tax, value-added tax, and any other taxes imposed by any taxing authority on the sale or use of any of the Products purchased (excluding any taxes solely on Seller's income) shall be borne solely by Buyer.

12. Compliance with law

Buyer represents, warrants and covenants that, at all times, Buyer's use, distribution, sale, marketing, advertising and export of all Products will comply with all applicable law, rules, regulations and industry standards of the United States and of any other applicable jurisdiction, including the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of the United States or any applicable foreign government, agency or authority. Buyer will not export or re-export, or authorize the export or re-export of any Product, technology or information it obtains or learns from Seller (or any direct Product thereof) in violation of any such laws, restrictions or regulations. Buyer shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export from the USA of the Products, or any resulting Product, to any location in compliance with all applicable laws and regulations.

13. Patents

Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that the manufacture or sale of a Seller Product constitutes direct infringement of any duly issued United States patent (a "Claim"). Seller shall pay all damages and costs finally awarded against Buyer in connection with a Claim, provided that Seller: (i) is promptly informed and furnished a copy of each communication, notice or other action relating to the Claim; (ii) is given all information and assistance (at Seller's expense) necessary to defend or settle said Claim; and (iii) Seller is given exclusive control over the defense and settlement of such Claim. Seller shall have no indemnification obligation, and Buyer shall indemnify, defend and hold harmless Seller to the extent the Claim arises out of (i) a combination of the Seller Products with other products, (ii) use of the Seller Products not authorized by Seller, (iii) any modification to the Seller Products made by or for Buyer, or (iv) any use of the Seller Product following notification from Seller that the Seller Products infringe, or are likely to infringe, third party Intellectual Property Rights. Seller's obligations shall not apply to any infringement occurring after Buyer has received notice alleging the infringement unless Seller has given written permission for such continuing infringement. If infringement is alleged prior to completion of delivery of the Seller Products, Seller may decline to make further shipments without being in breach of this Agreement. THE FOREGOING STATES THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY OF SELLER for patent infringement and is in lieu of all warranties, express, implied or statutory.

14. Intellectual property ownership

Buyer acknowledges that the Products may incorporate Software, and that such Software is not sold to Buyer and is licensed to Buyer for use solely as incorporated and/or embedded into the Product. Other than the foregoing license, Seller or its licensors shall retain all Intellectual Property Rights and interests in and to underlying the Products, and nothing in this Agreement shall be construed to grant Buyer a license of any kind to any Intellectual Property Rights of Seller. To the maximum extent allowable under applicable law, Buyer agrees that it shall not, directly or indirectly through any third party, reverse engineer, decompile, or translate any Product or seek to reveal the trade secret or know how underlying any Product.

15. Proprietary disclosures

a) Seller may disclose to Buyer certain confidential information ("Proprietary Information") and Buyer recognizes the value and importance of the protection of Seller's Proprietary Information. All Proprietary Information disclosed by Seller to Buyer shall remain the sole property of Seller (or its licensors), which shall own all rights, title, and interest in and to such Proprietary Information.

b) Seller may designate information as confidential by: (i) marking written information or other tangible media as "Confidential" or "Proprietary" or with a similar legend prior to disclosure; (ii) indicating in the visual display of information that such information is confidential; (iii) identifying oral information as confidential at the time of disclosure to Buyer; or (iv) notifying Buyer in writing prior to disclosure that certain specifically identified types of information are considered to be confidential. Information

which a reasonable person would deem confidential shall be treated as Proprietary Information even if such information is not so designated as set forth in the previous sentence. With regard to any Proprietary Information that may be disclosed orally, the Proprietary Information may be summarized in writing by Seller in a writing delivered to Buyer within thirty (30) days after disclosure; however, failure to provide such summary shall not affect the nature of such Proprietary Information.

c) Buyer agrees that, at all times and notwithstanding any termination or expiration of this Agreement, it will hold the Proprietary Information in strict confidence and not disclose it to any third party, except as approved in writing by Seller, and will use the Proprietary Information only for the purpose of performing its obligations under this Agreement and for the ordinary use of the Products, and not for any other purpose, whether for Buyer's own benefit or the benefit of any third party. Without derogating from the generality of the foregoing, Buyer shall: (i) keep the Proprietary Information in a safe and secure location and apply security measures no less stringent than the measures Buyer applies to protect its own like information, but in any event no less than reasonable security measures, to prevent unauthorized disclosure and use of the Proprietary Information; and (ii) only permit access to Proprietary Information to those of its employees, contractors, distributors, consultants, or authorized representatives having a need to know and who, prior to obtaining such access, are bound by a written confidentiality agreement with provisions to protect the Proprietary Information at least as restrictive as those contained herein. Buyer shall execute any documents and otherwise shall take all necessary steps to ensure that Seller and Buyer shall each be able to enforce Seller's rights hereunder against Buyer, its employees and all other third parties to whom Buyer discloses Seller's Proprietary Information as permitted herein, under the laws of each jurisdiction in which Seller's Proprietary Information is disclosed by Buyer. Buyer shall be responsible for any breach of this Section 15 by Buyer's employees, contractors, distributors, consultants, or authorized representatives.

d) Buyer shall immediately notify Seller upon discovery of any loss or unauthorized disclosure of the Proprietary Information.

e) Buyer's obligations under this Agreement with respect to any portion of the Proprietary Information shall terminate or not apply when Buyer can prove that such Proprietary Information: (i) is or subsequently becomes publicly available without breach of any obligation owed to Seller; (ii) became known to Buyer prior to Seller's disclosure of such information to Buyer; (iii) became known to Buyer from a source other than Seller, and without breach of any obligation of confidentiality owed to Seller; or (iv) was developed by Buyer entirely independent of and without access, reference to or use of any of the Proprietary Information.

f) If Buyer or any of Buyer's representatives is required by law to disclose any of the Proprietary Information or a disclosure to government officials is necessary to establish the rights of either party under this Agreement and such disclosure complies with the requirements set forth below, Buyer will, as soon as reasonably practicable, provide Seller with written notice of the applicable subpoena, law, or rule so that Seller may seek a protective order or other appropriate remedy. Buyer and its representatives will cooperate fully with Seller to obtain any such protective order or other remedy. Any information disclosed pursuant to this Section 15(f) shall remain Proprietary Information, and each party's obligations thereto shall survive, for all other purposes despite such limited disclosure.

g) Upon termination or expiration of the Agreement for any reason, Buyer shall cease (i) marketing, selling or otherwise dealing with any Product; (ii) representing itself as a seller of Products; and (iii) upon written request of Seller at any time, Buyer shall promptly return to Seller all documents and other tangible materials representing the Proprietary Information and all copies, derivatives or representations thereof in any form, and purge all electronic copies, derivatives or other representations in any form of the Proprietary Information that are under Buyer's direct or indirect control.

h) Proprietary Information shall not be reproduced or used in any form or for any purpose except as required to implement this Agreement. Any reproduction or derivative, in any form, of any Proprietary Information shall remain the property of Seller and shall contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by Seller.

i) Buyer hereby acknowledges (i) that it may be difficult to measure or calculate the damage to Seller, should Buyer, in breach of this Agreement or of its duties at common law or in equity, use or disclose the Proprietary Information of Seller, and (ii) that such breaches may result in irreparable harm to Seller and that monetary damages may, therefore, be an inadequate remedy for such breach. Accordingly, in addition to all other remedies available, Seller may seek an injunction or other appropriate judicial order to restrain any such breaches or the continuation thereof.

16. Waivers

Failure by Seller to insist upon performance of any term or condition of this Agreement shall not be construed as a waiver of such terms and conditions and shall not affect the right of Seller thereafter to enforce each and every term and condition.

17. Storage

Any detention, demurrage, storage, inspection, documentary or other charges, fees and expenses assessed by carriers, warehousemen or government agencies of any kind resulting from Buyer's requirement for special service or Buyer's failure to accept delivery in a timely manner shall be paid by Buyer.

18. Choice of law

a) This Agreement and all disputes arising out of or related to this Agreement shall be solely and exclusively construed and governed in accordance with the laws of the State of California, USA, without application of any law that would result in the application of a different body of law. The UN

Convention on Contracts for the International Sale of Goods is hereby expressly excluded and shall not apply to this Agreement. Any action to enforce the rights or obligations arising out of or pertaining to this Agreement shall be governed in accordance with Article 19, but in the event resolution to any dispute between the Parties is being sought in a court of law, the parties hereby irrevocably consent to the exclusive jurisdiction and proper venue of the state and federal courts located in the County of San Diego, State of California, USA, and waive any objections thereto based on any ground including improper venue or Forum Non-Conveniens.

b) Notwithstanding the foregoing, Seller shall have the right: (i) to enforce judgments; or (ii) seek injunctive relief for (a) a breach or threatened breach of this Agreement, or (b) an infringement or threatened infringement of its Intellectual Property Rights, in any court of competent jurisdiction.

19. Disputes/arbitration

a) The Parties shall attempt to first settle amicably all disputes arising out of or in connection with this Agreement, which attempt shall include, if required for settlement, internal escalation of the dispute to management of each Party who has the authority to discuss and settle the dispute. An attempt to arrive at a settlement shall be deemed to have failed upon the notification by one Party to the other Party in writing no earlier than fifteen (15) days after the existence of the dispute was identified in writing by one Party to the other.

b) Any and all disputes arising out of or relating to this Agreement which cannot be settled amicably between the Parties shall be resolved by arbitration in San Diego, California, USA under the commercial arbitration rules of the Judicial and Arbitration Mediation Service (JAMS). All arbitration proceedings shall be in English and all submissions shall be in English. The laws of the State of California, USA shall be applied to determine the merits of the dispute. The arbitral award shall be binding, final and conclusive upon the parties and may be entered into by any court having jurisdiction over the party against which an award is entered or its assets.

20. Affidavits and certificates

Seller shall include with each shipment a Certificate of Conformance in Seller's format. Any requirement by Buyer for test reports, chemical analysis or any other form of certification shall be considered as a special requirement and Seller reserves the right to charge an additional fee for any such requests.

21. Assignment

Buyer may not assign or delegate this Agreement without the prior, express written consent of Seller. Seller may freely assign or delegate this Agreement without Buyer's consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties, and their successors, and permitted assigns.

22. Notices

Any notice to be given hereunder by either Party to the other shall be in writing and shall be hand delivered or sent by overnight courier or registered, express mail, and shall be deemed to be effective two (2) business days after dispatch.

23. Severability

If one or more provisions in this Agreement are ruled entirely or partly invalid or unenforceable by any court or governmental authority of competent jurisdiction, then: (i) the validity and enforceability of all provisions not ruled to be invalid or unenforceable shall remain unaffected; (ii) the effect of such ruling shall be limited to the body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable shall be deemed amended, and the parties shall reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, or the controlling principle of law or equity leading to the ruling, is subsequently overruled, modified, or amended, then the provision(s) in question, as originally set forth in this Agreement, shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

24. Survival

Any rights to accrued payments and Sections 1, 2, 4, 8, 9, 11, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, and 26 shall survive the expiration or termination for any reason of this Agreement.

25. Government clause and contracts

Government Contract clauses and any clause essentially based upon Government Contract Regulations shall only apply to sales subject to a Government Contract, the terms and conditions of this sale shall include those Government Contract Clauses—not inconsistent with terms and conditions herein—where applicable Regulations are required to be included in a Contract or Subcontract for the minimum necessary purposes of the clause.

26. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. For purposes hereof, a facsimile copy of this Agreement, including the signature pages hereto, will be deemed to be an original.

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