



The present Terms and Conditions of Sale and Delivery (this "Agreement") shall apply to all orders placed with and all deliveries made by DEIF, Inc. (hereafter referred to as "DEIF") unless otherwise agreed in writing.

**1. QUOTATIONS**

All quotations are based on the sales prices, customs duty rates, exchange rates, taxes, etc. applicable on the date of the quotation. Notwithstanding the provision contained in item 2, DEIF reserves the right to adjust the final sales price in case of changes in the above-mentioned rates and taxes after the issue of the quotation.

**2. ORDERS**

All orders are binding on the party placing the order, for which reason any changes to or cancellation of any order are subject to DEIF's prior written acceptance. Concurrently with the placing of an order, the customer is obliged to advise whether the customer himself will be responsible for collecting the order, cf. item 3.

**3. DELIVERY**

All orders are delivered DDP the customer's premises (Incoterms 2010), unless otherwise agreed in writing.

**4. TIME OF DELIVERY**

The time of delivery is stated in the order confirmation issued by DEIF.

**5. RETENTION OF TITLE**

DEIF shall retain the full title to the product delivered until the purchase sum, including any interest accrued, is paid in full, cf. below.

**6. INTELLECTUAL PROPERTY RIGHTS AND DATA**

Subject to the provisions set forth herein, the sale by DEIF of a product implies the non-exclusive and non-transferable license to customer under any of DEIF's intellectual property rights ("DEIF IPR")

(1) to use and resell products as sold by DEIF to customer, as well as

(2) to use and resell systems of products manufactured by or on behalf of customer that include one or more of such DEIF products.

To the extent that software and/or documentation is embedded or made available by DEIF for downloading into a product, the sale of such product shall not constitute the transfer of ownership rights or title to such software and/or documentation to customer, but, subject to the provisions set forth herein, shall only imply a non-exclusive license to customer under DEIF IPR to use such software and/or documentation in conjunction with and as embedded in the product. DEIF shall be entitled to collect and store any and all available data from the products. DEIF retains an unlimited, transferable, perpetual, and irrevocable license to use said data, including but not limited to product and business development, marketing, statistics and for maintenance of the products. DEIF may only publish said data in anonymised form.

**7. PAYMENT**

Unless otherwise agreed in writing, invoices issued by DEIF are due 30 days after the invoice date. In the event of a delay in payment, interest is payable at a rate of 12 per cent per annum or 0.0329% daily, calculated daily from the due date and until payment is received by DEIF. Notwithstanding the aforementioned, DEIF may at its full and exclusive discretion, choose to revoke any credit provided, or to insist on payment prior to the tendering of delivery of any products. The customer is in no event entitled to withhold payment without prior acceptance in writing from DEIF.

**8. DELAY**

In the event that delivery is delayed by more than two weeks, the customer is entitled to a penalty amounting to one per cent of the purchase sum exclusive of VAT per week for that part of the delivery which is delayed. In no event can this penalty exceed eight per cent of the purchase sum exclusive of VAT for the part of the delivery which is delayed. In the event of delays exceeding eight weeks, the customer is furthermore entitled to request in writing that the agreement be cancelled, unless delivery is effected within 14 days thereof.

**9. DEFECTS AND NON-COMPLIANCE**

DEIF is obliged and entitled to remedy any defects or non-compliance in accordance with the contents of the present provision. DEIF is liable for the defects or non-compliance which is attributable to DEIF, and which result from defects in design, materials, software or manufacture. DEIF is not liable for any defects or non-compliance whatsoever in materials supplied by the customer, in designs made by the customer nor in designs made by DEIF in accordance with customer specifications. DEIF is not liable for defects caused by inadequate maintenance, by the customer's use of the product sold in a way in which it was not intended to be used, by incorrect assembly or installation on the part of the customer, by changes carried out by the customer without DEIF's consent in writing, by repairs performed by the customer or by ordinary wear and tear. DEIF is not liable for any consequences of the customer's incorrect installation or use of product software updates made available to the customer. DEIF is in no event liable for any defects or non-compliance in any product sold more than two years after delivery. DEIF can be held liable for defects or non-compliance only if the defective or non-compliant products are returned to DEIF in suitable packaging and only to the extent that DEIF, at its sole discretion, confirms the existence of the alleged defects or non-compliance. In the event DEIF determines that the returned products are neither defective nor non-compliant, DEIF is entitled to charge the customer any costs which DEIF has incurred on account of the unfounded allegations of defects or non-compliance by the customer. The liability, if any, of DEIF for damages - whether arising from breach of the terms agreed for the supply of products, is limited to an amount not exceeding the purchase sum giving rise to the liability.

**10. COMPLAINTS**

The customer shall submit any complaint in writing to DEIF and such complaint shall be submitted as soon as any defect or non-compliance has been observed or should have been observed, but in no event later than two years after the product has been delivered to the customer. In the event the time limit allowed for complaints passes, the customer's right to hold DEIF liable because of the defect or non-compliance observed shall lapse.

**11. PRODUCT LIABILITY**

DEIF is liable for personal injury only if such injury is attributable to products supplied by DEIF, and only if such injury is attributable to DEIF's negligence or negligence of persons for whom DEIF is liable. DEIF is only liable for damage to property in accordance with the provisions contained in the US legislation and case law governing product liability and with regard to international transactions only in accordance with the first sentence. DEIF is not liable for damage or injury caused by products made by the customer or by products which include components made by the customer or in which products made by the customer have been incorporated, when such damage is attributable to the customer's products. If a third party, for example the customer's customer, seeks to hold DEIF liable for damage or injury, the customer is obliged to indemnify DEIF in connection with any costs incurred by DEIF as a result thereof, including any compensation payable, attorney's fees and costs, etc. The customer is, furthermore, in support of DEIF, obliged to enter into any court proceedings or arbitration case instituted against DEIF by the third party.

**12. INDIRECT LOSSES**

DEIF is in no event liable for the customer's operating loss, loss of earnings, installation costs, loss of profits, loss of or damage to data, or any other indirect loss, including any loss resulting from the customer's legal relationship with any third party.

**13. REMEDYING DEFECTS AND NON-COMPLIANCE**

If a product is defective or in any other way non-compliant, cf. above, DEIF is entitled, at its own discretion, to remedy such defect or non-compliance by effecting repairs, a replacement delivery, or by refunding the purchase sum paid.

**14. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

DEIF, at its sole expense, shall:

(a) defend any legal proceeding brought by a third party against the customer to the extent that the proceeding includes a claim that any product supplied by DEIF hereunder directly infringes the claimant's patent, copyright, trademark, or trade secret; and

(b) hold the customer harmless against damages and costs awarded by final judgment in such proceeding to the extent directly and solely attributable to such infringement.

Notwithstanding the foregoing, DEIF is not liable for any patent infringement arising from compliance with the customer's design, specifications or instructions.

DEIF has no obligation or liability towards the customer

(1) if DEIF is not (i) promptly notified in writing of any such claim and (ii) given the sole right to control and direct the investigation, preparation, defence and settlement of such claim, including the selection of counsel and (iii) given full reasonable assistance and cooperation by the customer in such investigation, preparation, settlement and defence;

(2) if the claim is made after a period of three years from the date of delivery of the product.

If any product is or in DEIF's opinion is likely to become the subject of a claim of infringement as referred to above, DEIF has a right, but not an obligation at its sole option to: (i) procure for the customer the right to continue to use or sell the product or (ii) replace or modify the product in such a way as to make the modified product non-infringing or (iii) terminate any supply agreement to the extent it is related to such product. Subject to the exclusions and limitations set forth in item 11 above, the foregoing constitutes DEIF's entire liability and obligation towards the customer and the customer's sole remedy with respect to any actual or alleged infringement of any intellectual property rights of any kind.

**15. FORCE MAJEURE**

DEIF is not liable for any non-performance of DEIF's obligations if such non-performance is attributable to circumstances which can be regarded as being beyond the control of the company, including but not limited to strike, fire, war, mobilisation, requisitions, sequestration, foreign exchange restrictions, uprising and unrest, shortage of transportation, general scarcity of goods, restrictions concerning energy or defects or delays in deliveries from suppliers which are attributable to similar circumstances as the ones listed in this provision.

**16. EXPORT CONTROLS**

The products may be subject to export controls, and the delivery is therefore subject to the granting of the export authorisation required.

**17. GOVERNING LAW AND ATTORNEYS' FEES**

These Terms and Conditions of Sale and Delivery, and all disputes arising therefrom shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law principles. The parties consent to exclusive jurisdiction and venue in the federal and state courts sitting in Sacramento County, California. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses.