

TERMS and CONDITIONS

1. Duties

On Sales to points outside the United States, all export duties and fees related there to which *ETI Systems* is required to pay shall be paid by Buyer in addition to the prices quoted herein.

2. Prices

Prices quoted herein do not include any applicable excise, sales, use or similar taxes whether Federal, State or Local. Buyer may provide *ETI Systems* with a tax exemption certificate acceptable to the taxing authorities. Any transportation charges shall be paid by Buyer in addition to the prices herein quoted. Prices are subject to change without notice. If prices are increased, the prices in effect immediately prior to the increase will apply to the unshipped portion of all firm orders for a period of thirty (30) days following the effective date of the increase. If published prices are reduced, the prices in effect at the time of shipment shall apply.

3. Delivery/Title

All shipments are F.O.B. *ETI Systems* factory, Carlsbad, CA. Title to and risk of loss and damage to equipment and parts shall pass to buyer upon delivery to carrier. Items will be packaged to conform to standard commercial practices to *ETI Systems*. *ETI Systems* shall not be liable for delays in delivery or failure to manufacture due to causes beyond its reasonable control, such as acts of God, acts or omissions of Buyer, acts or omissions of Civil and Military Authority, fires, strikes, floods, wars (whether declared or undeclared), or any other cause beyond its reasonable control.

4. Final Inspection and Acceptance

Final inspection and acceptance shall be performed by Buyer at Buyer's facility within thirty (30) days of receipt of equipment. Unless *ETI Systems* is notified to the contrary during said period, items delivered shall be presumed to be accepted at the expiration of said period.

6. Patents

ETI Systems agrees to defend Buyer at *ETI Systems* own expense in any suit or proceeding in connection with an allegation (other than an allegation based on a combination of *ETI Systems* equipment with other equipment and Buyer hereby indemnifies *ETI Systems* against any liability based on a claim of contributory infringement arising from such combination) that the equipment purchased hereunder infringes United States Letters Patent owned by others.

No patent protection whatever against foreign patents is granted by *ETI Systems*.

6. Payment Terms

Payment terms are net 30 days from date of shipment. Buyer hereby agrees to submit reasonable financial information from time to time as required by *ETI Systems*. In the event Buyer fails to make payments when due, or otherwise defaults hereunder, *ETI Systems* may upon prior notice: (I) suspend credit and delay shipment until such terms are met; and/or (II) alter the terms of payment; and/or (III) cancel any order then outstanding and receive reimbursement for cancellation and/or billback charges as applicable; and/or (IV) pursue any other remedies available at law or equity. *ETI Systems* shall charge and Buyer agrees to pay a finance charge of 1-1/2% per month on the unpaid balance of overdue accounts.

7. Warranty

ETI Systems warrants each item of its manufacture to be free from defects in material and workmanship for a period of one year from original purchase. Equipment within the warranty period will be repaired free of charge and returned to the point of original sale provided that: (I) prior approval is obtained from factory; (II) the defective unit in returned freight prepaid; and (III) the unit has not been damaged by misuse, neglect, improper operation, accident or alteration, as determined by Seller. Equipment beyond the warranty period will be repaired only after Buyer has authorized quoted repair charge.

8. Cancellation/Rescheduling

If an order is cancelled by Buyer, Buyer agrees to pay a cancellation charge to be determined by *ETI Systems* at time of such cancellation. Cancellation charges to be based on parts or labor already expended or committed by *ETI Systems* prior to the cancellation.

Rescheduling an order may result in a rescheduling fee if parts or labor have been expended or committed by *ETI Systems* prior to rescheduling, or if the revised delivery date falls beyond Blanket Order Contract date, or if a price increase will be in effect at time of revised shipping date. Any rescheduling of an order must be agreed upon by *ETI Systems* in advance of such rescheduling.

9. Changes

ETI Systems reserves the right to modify or change the equipment, in whole or in part, at any time prior to delivery in order to include improvements deemed appropriate by *ETI Systems* but without incurring any liability to modify or change any equipment previously delivered.

10. General

In the event that any court or competent jurisdiction holds any provision contained herein to be invalid or unenforceable, such action shall not affect the remaining provisions which shall remain in full force and effect. The failure of *ETI Systems* to insist upon strict performances of any of the provisions contained herein shall in no way constitute a waiver by *ETI Systems* or any of the other provisions or subsequent default by Buyer in the performance of or compliance with any of the terms and conditions set forth herein. This document shall be construed and its terms interpreted in accordance with the laws of the State of California. The delegation or assignment by Buyer of all its duties, obligations or rights hereunder without the prior written consent of *ETI Systems* shall be void. All confirming purchase orders must be addressed to *ETI Systems*, Carlsbad, CA., but may be mailed to local sales representatives for forwarding.

11. Agreement

The Terms and Conditions set forth herein constitute the entire understanding between *ETI Systems* and Buyer and supersedes all prior communications or agreement written or oral, and any Terms and Conditions contained on Buyer's purchase orders which are not in strict accordance with the provisions set forth herein shall not be binding on *ETI Systems* and shall not be considered applicable to any sale. No representation, promise, modification, or waiver of any of these provisions shall be effective unless in writing and signed by an authorized representative of *ETI Systems*. A contract between *ETI Systems* and Buyer shall exist only when *ETI Systems*, through its Carlsbad, California office has accepted in writing, Buyer's purchase order, subject to *ETI Systems* sales order and terms and conditions.

12. Limitations of Liability

IN NO EVENT SHALL ETI SYSTEMS BE LIABLE FOR COLLATERAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE TRANSACTIONS WHICH ARE THE SUBJECT THEREOF. *ETI Systems* hereby notifies the user that *ETI Systems* assumes no liability or responsibility resulting from failure or success of this device, as *ETI Systems* is not responsible or asked to approve the user's final assembly. Therefore, written approval of final user design and quality control testing must be obtained by user from *ETI Systems* in order to activate any *ETI* warranty.

USING THIS DEVICE FOR ANY MEDICAL OR LIFE SUPPORT PURPOSES MUST HAVE WRITTEN APPROVAL BY ETI SYSTEMS.

We assume no responsibility on so-called "*PRODUCTS LIABILITY*", unless we are fully notified on the use or application and a written conformation to do so was issued from us. This policy shall be applied for the applications of medical, life support and any nuclear facilities.

13. Attorneys' Fees

In the event either party commences litigation to enforce or interpret this Agreement, the prevailing party shall be entitled to recover, in addition to all other items of recovery permitted by law, reasonable attorney's fees and costs incurred. The term "litigation" includes any proceedings involving arbitration.

In addition to the amount(s) under this agreement, purchaser(s) jointly and severally agree to pay reasonable attorney's fees and all other costs, and expenses incurred by *ETI Systems, Inc.* in enforcing this purchase order in any action or proceeding arising out of, or relating to, this purchase order.

14. Jurisdiction and Venue

In any litigation arising hereunder or relating to any contract between Buyer and *ETI Systems, Inc.*, Buyer hereby expressly submits to the jurisdiction of the Courts of California and further expressly agrees that the proper venue in any such action shall be the County of San Diego, North County Judicial District Branch Court.

REV. 8/07