



AGILESWITCH, LLC TERMS AND CONDITIONS OF SALE

1. APPLICABILITY

These Terms and Conditions of Sale apply to sales by AgileSwitch, LLC, hereinafter designated as "Seller" with respect to the sale of goods to Buyer. The prices and terms on this quotation are not subject to verbal changes or other agreements unless approved in writing by the Home Office of the Seller. Prices and terms are based on costs and conditions existing on the date of quotation and are subject to change by the Seller before final acceptance. All quotations, agreements, and delivery dates requested by Buyer are contingent upon availability of materials, delivery of products purchased by Seller for resale to Buyer, and all other factors beyond our control. Typographical and stenographic errors are subject to correction. Conditions not specifically stated herein shall be governed by established trade customs. Terms appearing on the Buyer's formal order which attempt to impose additional conditions, or terms which are inconsistent with those stated herein, will not be binding on the Seller. Seller's failure to specifically object to provisions in the Buyer's order form, or references thereto, shall not be deemed a waiver by Seller of such terms and conditions. Seller reserves the right to make changes without further notice to any products offered by the Seller.

2. DELIVERY/TITLE

All shipments shall be FOB place of origin, unless otherwise specified in writing. Subject to Seller's right to stoppage in transit, delivery of the Products to a carrier shall constitute delivery to Buyer, and risk of loss shall thereupon pass to Buyer, however title shall remain in Seller until Buyer makes payment in full under the contract. Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller. These causes shall include without limitation, acts of God, acts or omissions of Buyer or civil or military authorities, delays in transportation, delays in delivery from the manufacturer or AGILESWITCH of the product purchased by the Seller for resale to Buyer, or inability to obtain necessary labor, materials or supplies. In the event of any delay, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of such delay without penalty to Seller, or Seller may, at its option, cancel without liability, Buyer remaining liable to pay for shipments already made. Seller shall be entitled to refuse or to delay shipments for failure by Buyer to pay within terms any payments due Seller, whether on this or any other contract between Seller and Buyer. Seller shall have the right to deliver all goods covered hereby at one time or in portions from time to time, within the time for delivery provided in such order.

3. CANCELLATION

Orders accepted by Seller may be canceled by Buyer only upon written consent of Seller. In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which Seller may have as a result of such cancellation or other withdrawal, reasonable cancellation or restocking charges, which shall include all expenses then incurred and commitments made by Seller, shall be paid by Buyer to Seller. Orders may not be cancelled or rescheduled after delivery by Seller to the carrier. In the event of allocation of Products, orders will be accepted by Buyer using a schedule method. Special order items (items not normally stocked) are non-cancelable and non-returnable.

4. RETURN POLICY

Approval must be obtained from Seller prior to return of any merchandise. All material returned without a **RMA (RETURN MATERIAL AUTHORIZATION)** number will be refused automatically.

5. TERMS

Terms of payment are net 30 days from date of invoice unless (a) the Buyer paid for the product in full either at the time the order was placed or at the time product was shipped, or (b) the terms of payment have been otherwise specified by Seller in writing. Seller retains, and Buyer hereby grants Seller, a security interest in the goods, including all accessions to and replacements of them until Buyer has made payment in full in accordance with the terms hereof, and Buyer shall cooperate fully with Seller in executing such documents, including a Uniform Commercial Code financing statement, and accomplishing such filings and/or recordings thereof as Seller may deem necessary for the perfection and protection of such security interest.

6. CREDIT

If and after Buyer is approved for credit, Seller may in its sole discretion at any time and from time to time change the terms of Buyer's credit, require payment in cash before shipment of any or all of the products specified herein, and/or require anticipated payment of any or all amounts due or to become due under this contract. If Seller believes in good faith that Buyer's ability to make payments called for by this contract is or may be impaired, Seller may cancel this contract or any remaining balance thereof, Buyer remaining liable to pay for any Products already shipped.

7. INSPECTION AND ACCEPTANCE OF GOODS

Final inspection and acceptance of the goods shall be at Buyer's facility. Buyer shall be responsible for conducting the final acceptance tests, if necessary. These tests shall be completed promptly and in no event later than 30 days after delivery, at which time Buyer must either accept or reject goods in accordance with Paragraph 10. Any discrepancy in shipment quantity must be reported within 5 working days of receipt.

8. BUYER'S TERMS AND CONDITIONS

Seller desires to provide its customers prompt and efficient service. However, to negotiate individually the terms and conditions of each sales contract would substantially impair Seller's ability to provide such service. Accordingly, unless otherwise specifically agreed to in writing by Seller, goods furnished and services rendered by Seller are sold only on the terms and conditions stated in these Terms and Conditions of Sale. Any conflicting statements or terms listed on the Buyer's purchase orders or other Buyer generated documents (Buyer's Documents) whether heretofore or hereafter submitted are negated by the issuance of credit by Seller to Buyer and all different or additional terms and conditions contained in any Buyer's Documents are hereby objected to by Seller. Notwithstanding any terms or conditions on Buyer's order, Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions of Sales unless otherwise specifically agreed to in writing by Seller. In the absence of such an agreement, commencement of performance and/or delivery shall be for Buyer's convenience only and shall not be deemed or construed to be acceptance of Buyer's terms and conditions, or any of them. If a contract is not earlier formed by mutual agreement in writing, acceptance of any goods or services by Buyer shall be deemed acceptance of the terms and conditions stated herein.

9. TAXES

Seller's prices do not include sales, use, excise or similar taxes. Accordingly, Buyer shall, in addition to prices specified by Seller, pay any sales, use, excise or similar tax attributable to the sale of the goods covered hereby, or, in lieu thereof, provide Seller with tax exemption certificates acceptable to the taxing authorities.

10. WARRANTIES AND REMEDIES

Seller warrants that, at the time of delivery, the goods covered hereby are in accordance with their manufacturer's specifications, but makes no warranty, representation, or guarantee regarding the fitness of such products for Buyer's particular purpose or requirements, nor does Seller assume any liability arising out of the application or use of any product or circuit, and specifically disclaims any and all liability, including without limitation consequential or incidental damages. "Typical" specifications can and do vary in different applications. All specifications and operating parameters must be validated for each customer application by customer's technical experts. Seller agrees, as Seller shall elect, to credit the account of Buyer or replace without charge to Buyer all goods which, at the time of delivery, are not in accordance with their manufacturer's specifications, but only if Buyer returns such goods to Seller's plant within 30 days from date of delivery, in accordance with Paragraphs 4 and 7 of these Terms and Conditions of Sale, in the original packaging and in good condition, without their serial numbers or any part thereof altered, defaced or removed, and accompanied by a specification in writing of the defects involved. Buyer shall notify Seller in each instance when Buyer intends to return goods which Buyer believes are not in accordance with their manufacturer's specifications and Seller shall be entitled to examine such goods at Buyer's facilities prior to return. Final inspection and determination whether goods are in accordance with their manufacturer's specifications shall be made at Buyer's plant, or may be based upon the manufacturer's actual test report. Seller's sole liability shall be to credit the account of Buyer or to replace goods which are not in accordance with their manufacturer's specifications in accordance with the terms hereon and in no event shall Seller be liable for damage of any kind. The foregoing remedy as provided herein shall be the sole and exclusive remedy of the Buyer. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED.**

11. INDEMNIFICATION

Seller's products are not designed, intended, or authorized for use as components in systems intended to support or sustain life, or for any other application in which the failure of the Seller's product could create a situation where personal injury or death may occur. Should Buyer purchase or use Seller's product for any such unintended or unauthorized application, Buyer shall indemnify and hold Seller and its officers, employees, subsidiaries, affiliates, and distributors harmless from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever, including the reasonable fees and actual expenses of Seller's counsel, arising out of, directly or indirectly, any claim of personal injury or death associated with such intended or unauthorized use, including those arising from the joint, concurrent, or comparative negligence of Seller, except to the extent any of the foregoing results solely from Seller's gross negligence or willful misconduct, even if the claim alleges that the Seller, or manufacturer of the product supplied to the seller for resale, was negligent regarding the design or manufacture of the part.

12. EXCLUSION OF WARRANTIES AND REMEDIES

SELLER HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING IN FACT OR BY OPERATION OF LAW, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OF THE MATERIAL OR WORKMANSHIP, OR FITNESS FOR USE FOR THE BUYER'S PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, WHICH DOES NOT APPEAR ON



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13. LIMITATION OF LIABILITY

SELLER SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGE OR LOSS DUE TO DELAY IN DELIVERIES, DELAY IN SERVICE, OR USE OR INTERRUPTION OF USE OR BUSINESS, OR LOSS OF PROFITS OR ANY OTHER INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE. Seller's liability arising out of any sale of goods to Buyer is expressly limited to either (1) refund of the purchase price paid by Buyer for such goods (without interest), or (2) repair and/or replacement of such goods, at Seller's election, and such remedies shall be exclusive and in lieu of all others. The remedies of the Buyer set forth herein are exclusive, and the liability of Seller with respect to any contract or sale or anything done in connection therewith, or any other claim, whether in contract, in tort, in warrant or otherwise, shall not exceed the purchase price of the product or part on which such liability is based.

14. PATENTS

Seller shall have no liability of any kind with respect to any actual or alleged infringement of any United States or foreign patent, trademark or similar rights.

15. INSTALLATION

Buyer shall be solely responsible for the installation and operation of the goods covered hereby including without limitation, the obtaining of all permits, licenses or certificates required for the installation or use of such goods.

16. TECHNICAL DATA

Buyer shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation or maintenance of goods purchased by Buyer, without Seller's prior written consent.

17. WAGE AND HOUR COMPLIANCE

Seller hereby certifies that it is in compliance with all applicable requirements of the Fair Labor Standards Act of 1938 as amended and with the regulations and orders of the Administration of the Wage and Hour Division issued thereunder.

18. DISPUTES

Any dispute or claim arising out of or relating to this agreement, or the breach thereof shall be settled by arbitration, held in Pennsylvania, in accordance with the rules of the American Arbitration Association, and judgment on award rendered may be entered in any court having jurisdiction thereof.