

## WARRANTY AND LIMITATION OF LIABILITY

### Warranty.

Seller warrants that the Products provided to Buyer shall for a period of one (1) year from the date of delivery from Seller facility ("Warranty Period") (i) meet the Specifications for the Products if any provided by Seller; and (ii) be free from defects in workmanship and material.

**Remedy.** If a Product is defective in workmanship or material or does not meet the Specification, if any, Seller will at its option, during the Warranty Period, (i) repair or replace the Product at no charge to Buyer or (ii) provide to Buyer a credit equal to the purchase price of the Product, provided Buyer provides prompt written notice of the defect within the Warranty Period. Freight charges for Products returned to Seller for repair/warranty analysis are the responsibility of Buyer, and upon such return, Buyer must properly package such Product to protect against risk of loss and damage, including damage from electrostatic discharge. Such repair, replacement or issuance of a credit shall be Buyer's sole and exclusive remedy with respect to a breach of the warranty set forth herein. All costs of de-installation or re-installation of the Product shall be borne by Buyer. Products that are repaired or replaced during the Warranty Period are warranted for a period of six (6) months from the date of repair or replacement or the unexpired term of the original Warranty Period, whichever period is shorter. Where Products are replaced pursuant to this Section, Buyer shall be invoiced for the replaced Products and then issued a credit for such Products to be applied against future orders. If it is determined by Seller that the Product returned is not defective, Buyer agrees to pay Seller a service fee of One Hundred (USD 100) Dollars per Product return.

**Warranty Exclusions.** If, however, upon inspection of any of the Products to which this warranty applies, Seller determines that a claimed defect resulted from (i) normal wear and tear, including corrosion; (ii) installation and/or maintenance by Buyer or a third party; (iii) misuse or abuse, whether willful or negligent, of any of the Products by any person other than Seller; (iv) modifications, alterations, service, repair or replacement made by Buyer or a third party during the Warranty Period that were not requested or authorized by Seller; (v) any combination or use of the Products with any incompatible equipment or ancillary products that may be connected to the Products; (vi) failure of Buyer to maintain environmental conditions in accordance with Seller specifications or instructions, including but not limited to, adequate electrical power, temperature, vibration and humidity control; (vii) failure to follow all instructions provided by Seller (whether oral or written); (viii) customized equipment manufactured by third parties for incorporation into any of the Products; (ix) defects or errors in any custom specifications provided by Buyer; (x) causes beyond Seller reasonable control; or (xi) causes other than our workmanship or materials, then the warranty shall be null and void and cease to apply. Seller shall have the sole right to determine whether Products are actually defective and the cause of the alleged defect.

THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A SPECIFIC APPLICATION BY BUYER, PERIOD OF SERVICE AND NON-INFRINGEMENT. NO EMPLOYEE OR AGENT OF SELLER, OTHER THAN AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING. Without limiting the foregoing, Seller does not warrant that the Products will be suitable for Buyer's specific needs, will work in any particular environment, will perform without interruption or be error free, or will work in conjunction with Buyer's equipment.

**Buyer Indemnity.** Buyer agrees to defend, indemnify and hold Seller harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by the Products while in possession or under the control of Buyer or Buyer's customer except as expressly set forth elsewhere in these Conditions.

**Disclaimer of certain damages.** IN NO EVENT SHALL SELLER BE LIABLE (AND BUYER WAIVES ALL CLAIMS AGAINST SELLER) FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, COSTS OR EXPENSES BASED UPON NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, FROM PRODUCTS THAT ARE THE SUBJECT OF THIS CONTRACT, OR THE USE OR FAILURE THEREOF, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION, PROFITS OR INJURY TO PERSONS OR PROPERTY. THIS DISCLAIMER SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL FAIL OF ITS ESSENTIAL PURPOSE.

**Limitation of Liability.** SELLER MAXIMUM LIABILITY SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT(S) THAT GAVE RISE TO ANY SUCH LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE CONTRACT AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. THE REMEDIES OF BUYER CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO BUYER UNDER APPLICABLE LAW.



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