

## Calogic LLC- Term and Conditions

All sales by Calogic LLC ("Seller") are subject to the following terms and conditions and those on the face hereof:

**1. PRICE AND TERMS.** Unless otherwise specified, the terms are stated on acknowledgement, F.O.B. Seller's plant. Prices are subject to change without notice. Seller reserves the right to discontinue any product at any time without notice.

Buyer agrees to pay Seller for goods made subject to an order within thirty (30) days of the date of Seller's invoice or as otherwise required by Seller. Interest at 1.5% per month will be charged on delinquent accounts. In the event Seller is required to seek the aid of any attorney for collection of outstanding amounts, Buyer agrees to also pay all attorney's fees and court costs. In addition, Seller reserves the right at any time to revoke any credit extended to Buyer and to ship goods C.O.D. for any reason deemed good and sufficient by Seller.

**2. DELIVERY.** Delivery of goods to common carrier or licensed trucker shall constitute delivery and passage of title to Buyer, and all risk of damage or loss following such delivery shall be borne by Buyer, notwithstanding any provisions of payment of freight or insurance by Seller or of the form of shipping documents.

Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept such installment or any subsequent deliveries.

Claims for failure of goods to conform to this contract, overage, shortage, or damage in transit (where applicable) shall be valid only if made in writing and received by Seller within thirty (30) days after buyers receipt of such goods.

Any delivery date specified herein is estimated and not guaranteed. Seller shall not be liable for any delays in delivery or shipment of products or for any consequential or other damages suffered by the Buyer for reason of such delay.

**3. PRODUCTION STANDARDS.** Except in the particulars specified by the Buyer and expressly agreed to in writing by Seller, the products furnished hereunder shall be produced in accordance with Seller's standard practices. All products, however, shall be subject to trade practices and Seller's standard tolerances and variations.

Seller reserves the right to make changes in design at any time without incurring any obligation to install the same on units previously purchased.

**4. PATENT INDEMNITY.** In lieu of any other warranty and to the extent the items covered hereby are manufactured pursuant to designs of Seller or are manufactured by a process of Seller, Seller shall defend at Buyer's option and at Seller's expense any suit against Buyer, its agents and customers, which suit is based upon the allegation that such items so manufactured infringe any United States patent, and shall pay costs and damages finally awarded in such suit; provided (a) that Seller is notified in writing of such suit and given authority, information, and assistance (at Seller's expense) for the defense or settlement of same, and (b) that this warranty shall not apply to any infringement arising out of the use of the items covered hereby in combination with other items or components not manufactured by Seller.

In lieu of any other warranty and to the extent the items covered hereby are manufactured to a design supplied by Buyer, Buyer shall defend at Seller's option and at Buyer's expense any suit against Seller or its agents or servants which suit is based upon

the allegation that such items so manufactured infringe any United States patent, and shall pay cost and damages finally awarded in any such suit, provided Buyer is notified in writing of the suit and given authority, information, and assistance (at Buyer's expense) for defense or settlement of same.

**5. COMPLIANCE WITH LAWS.** Seller represents that the goods covered by this contract will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of the rules and regulations of the U.S. Department of Labor issued thereunder.

**6. CANCELLATION.** The order to which Seller's acknowledgement applies may be cancelled only by a writing signed on behalf of Seller and Buyer, and upon terms that will reimburse Seller for its cost incurred in connection therewith, including labor expended and material ordered and procured, fabricated, or partially fabricated. If the terms covered by such order are being purchased by Buyer to complete a contract with the US Government and subject to termination by the Government, then Buyer will reimburse Seller in accordance with the provisions of the standard termination article contained in such Government contract, however, that in any case such reimbursement shall be promptly made by Buyer upon such cancellation.

**7. TAXES.** Seller does not report, pay, or collect any use tax, sales tax, or similar tax, which may be imposed upon the Buyer under the laws of the state to which shipment is to be made, unless such charge shall be separately stated on the order and the invoice for any such goods. Buyer shall report and pay any use taxes or similar taxes, which may be imposed upon Buyer by reason of such, order and shall hold the Seller harmless therefrom.

**8. TOOLING.** Any jigs, dies, tools, or any other items used in connection with the fabrication process, which are purchased or manufactured for Buyer, shall remain the property of the Seller unless otherwise especially agreed in writing, notwithstanding and change therefore.

**9. WARRANTY AND DISCLAIMER.** Seller warrants the products to be free from defects in material and workmanship and to be in conformity with applicable specifications; provided, however, that this warranty shall not apply to any product which shall have been abused or misused physically or electrically or whose leads have been clipped or soldered, or on which the trademark shall have been defaced or obliterated. In no event shall Seller be liable for an amount in excess of the net price of the products found to be defective or not in conformance with applicable specifications. All products are guaranteed to operate in complete conformance with the applicable specification. If a product is found defective or not in conformance with applicable specification, it will be subject to adjustment only if written authorization is requested within a period of thirty (30) days from the date of the original shipment by Seller.

Authorization for return must be secured from Seller and will not commit Seller to the making of any adjustment with respect thereto. Requests for return authorization must list types and quantities of products involved, the reason for the request, information concerning operation conditions involved, and the period of use. In addition, the customer's purchase order number and, where possible, the original invoice number covering the original purchase of the products involved must be shown. Returned products must be shipped, transportation prepaid, by the most economical shipment. Product must be returned in original packing material (tubes, trays, etc.) or Industry

accepted equivalent. Shipping costs will be credited on all products found subject to warranty adjustment. Excess transportation costs resulting from the employment of other than the most economical carrier will not be allowed. Seller can accept no billing for packing, inspection, labor charges, or other incidental costs in connection with any products returned for adjustment. Unless otherwise requested by the customer, defective returned products found not to be subject to warranty adjustment will be sent back to the customer, transportation collect. Adjustment will take the form, at Seller's option, of a replacement or repair of the defective or non-conforming product, a credit in the amount of the adjustment or a replacement with a credit in the amount of this adjustments against the purchase price of the replacement. *This warranty is in lieu of all other warranties whether written, oral, expressed or implied (including, without limiting the generality of the foregoing, any warranty of merchantability or fitness for purpose.)*

Replaced or repaired products will then have the same warranty as the original device.

### **Warning Regarding Life Support and Aerospace Applications**

Policy:

Calogic's products are not authorized for use as critical components in aerospace, life support devices, implants in the body, or systems without the express written approval from the President of Calogic LLC.

1. Life support devices or systems are devices which, (a) are intended for surgical implant into the body, or (b) support or sustain life.
2. A critical component is any component of a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system, or to affect its safety or effectiveness.