



## TERMS AND CONDITIONS OF SALE

1. **OFFERS:** Offers made and prices quoted by Semiconductor Enclosures Incorporated ("SEI") are valid for 30 days from the quotation date, unless otherwise specified in writing within the quotation.
2. **CONTROLLING TERMS:** No orders for products or services of SEI shall be binding on SEI until acknowledged in writing by an officer of SEI. These terms and conditions of sale apply to all purchase orders transmitted to SEI, they take precedence over Purchaser's additional or different terms, and they are the complete and exclusive statement of the terms of the agreement of the parties. **ISSUANCE OF A PURCHASE ORDER AND/OR ACCEPTANCE OF ITEMS BY PURCHASER SHALL IRREVOCABLY MANIFEST PURCHASER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND SEI AGREES TO FURNISH PRODUCTS AND SERVICES ONLY UPON THESE TERMS AND CONDITIONS.** SEI's failure to object to terms contained in any communication from Purchaser shall not be deemed a waiver of this provision. No waiver, alteration, or modification of any of the provisions hereof shall be binding on SEI unless made in writing and signed by an officer of SEI.
3. **SHIPMENT, DELAYS IN PERFORMANCE:** Shipment dates are approximate. Delivery of items to a carrier at SEI's plant or other loading point shall constitute delivery to Purchaser; and title shall thereupon pass to Purchaser, and all risk of loss or damage to goods thereafter shall be borne by Purchaser. Shipment of items to Purchaser's desired location, if arranged by SEI, shall be either freight collect or freight prepaid with charges invoiced to Purchaser, unless otherwise agreed. SEI reserves the right to make partial deliveries, and all such partial deliveries may be separately invoiced and shall be paid for when due. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept later deliveries. In no event shall SEI be liable for any failure or delay in performance or delivery due to unforeseen circumstances or causes beyond its control, including, but not limited to, acts of nature, acts of government, labor difficulties, or unavailability of necessary labor, materials, manufacturing facilities, or transportation.
4. **SHIPMENT INTO STORAGE, CANCELLATION:** If for any reason attributable to Purchaser, including, but not limited to, failure to give shipping instructions or make a due payment, SEI withholds shipping items to Purchaser, SEI may store the items, at Purchaser's risk, in a warehouse or upon SEI's premises, and in addition to its responsibilities otherwise under the order, including to make payments when due, Purchaser shall pay all costs resulting therefrom. No order may be cancelled by Purchaser, nor may shipments be deferred, unless agreed to by a separate document signed by an officer of SEI, setting forth and conditioned upon the payment to SEI of amounts as specified therein sufficient to compensate SEI for any loss incurred due to such cancellation, including any lost profit.
5. **PAYMENT, SECURITY:** Payments shall be due in accordance with the terms stated on SEI's invoices. Any amounts not paid when due shall be subject to a late payment charge at the rate of 1 ½% per month, but not higher than permitted by law; and, in the event of any default in payment, without limitation of its rights otherwise, SEI shall be entitled to discontinue performance under any arrangement with Purchaser and to recover all costs of collection, including attorneys' fees. SEI reserves the right, at any time, to require an irrevocable letter of credit from a bank which it designates or, when, in SEI's opinion, the financial condition of Purchaser so warrants, to alter or suspend credit, refuse shipment, or cancel unfilled orders. SEI retains a security interest in each item, and in the proceeds thereof, until Purchaser has made full payment. Therefore, upon request of SEI, Purchaser shall sign any document required to perfect such security interest. Without limitation of its rights otherwise, SEI shall be entitled to all rights available to a secured party, including the right to repossess upon failure of payment or other default by Purchaser.
6. **TAXES AND OTHER CHARGES:** Any manufacturer's tax, sales tax, use tax, value added tax, excise tax, custom, inspection or resting fee, or any other tax, fee, or charge of any nature whatsoever imposed by any governmental authority, upon or with respect to the transactions covered hereby shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event SEI is required to pay any such tax, fee, or charge, Purchaser shall reimburse SEI therefor promptly upon notice from SEI.
7. **INTELLECTUAL PROPERTY INDEMNITY:** SEI accepts no liability for, and Purchaser shall defend, indemnify and hold SEI harmless against any expense or loss resulting from infringement of patents, copyrights, trademarks or other intellectual property rights of others arising from SEI's compliance with Purchaser's specifications, instructions or requirements that a product be produced to perform a specific process. The sale of products by SEI does not convey any license, by implication, estoppel or otherwise under any patents of SEI or others covering said products. Subject to the foregoing, SEI, if notified promptly in writing and given authority, information and assistance for defense, shall defend any suit or proceeding brought against Purchaser, so far as based on a claim that any SEI manufactured product constitutes direct infringement of any U.S. apparatus patent, other than a software patent, of any third party. In case said product is, in such suit, held to constitute direct infringement of such apparatus patent and all use of said product by Purchaser is enjoined, SEI shall, at its election, either procure for Purchaser the right to continue using said product, replace same with a non-infringing product, modify it so it becomes a non-infringing product, or remove said product and grant a credit to Purchaser based on a five year straight-line depreciation of the original purchase price. In no event shall SEI's total liability to Purchaser under or as a result of compliance with the provisions of this paragraph exceed the aggregate sum paid by Purchaser for the allegedly infringing product. In no event shall SEI have any liability for any claim alleging infringement of a process patent or a patent covering software or covering a combination in which the product furnished by SEI is only a part. **THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT OF ANY KIND.**
8. **ACCEPTANCE OF ITEMS:** If Purchaser has any claim or complaint concerning any item including, without limitation, claimed shortages, defects, quality problems, or delivery errors, it shall notify SEI in writing within 30 days after receipt thereof, specifying the basis of its complaint. If no notice is received from Purchaser within 30 days of receipt, the items shall be deemed accepted on the date of delivery and Purchaser shall be deemed to have waived all claims and complaints, except as permitted by SEI's express warranty.
9. **EXPRESS WARRANTY, REPAIRS, RETURNS:** SEI warrants to Purchaser that items provided by SEI shall conform to its published specifications and shall be free from defects in material and workmanship when used under normal operating conditions and that all service provided by SEI shall be performed in a workmanlike manner. This warranty shall apply for such period of time and under such conditions as are specified in SEI's standard warranty for each item. If not otherwise specified, complete systems shall carry a warranty for parts which shall apply for a period of one year from shipment by SEI. The warranty for spare parts shall apply for a period of 90 days from shipment by SEI. The warranty for service shall apply for a period of 90 days from performance of the service. The warranty granted hereunder, however, does not include parts which SEI considers as consumables under normal operating conditions; and, if a system includes major subsystems or components not manufactured by SEI, SEI's warranty with respect to such shall be limited to the warranty extended to SEI by the supplier thereof. In no event shall SEI's warranty apply to defects caused in whole or in part by external causes, such as, but not limited to, catastrophe, power failure or fluctuations, environmental extremes, or improper or unconventional use, maintenance, or application. If an item or part thereof proves defective and does not meet its warranty, such item or part shall be repaired or replaced, at SEI's option. SEI's obligation to repair or replace shall be conditioned upon SEI's receiving written notice of any alleged defect during the applicable warranty period and within 10 days after its discovery and, at SEI's option, return of such item or part to SEI's factory in Billerica, Massachusetts or such other facility as SEI may designate. All items returned to SEI must be accompanied by a SEI Materials Return Authorization signed by an authorized representative of SEI. Unless specifically noted otherwise in writing, return of items by Purchaser shall constitute Purchaser's authorization for SEI to repair such and to invoice Purchaser for its standard charges if the item is not covered by the terms of the warranty. Purchaser shall be responsible for all freight and customs charges and all risk of loss or damage during transit, both to and from SEI's facility, whether or not the item meets warranty requirements. **THE FOREGOING WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. SEI SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
10. **LIMITATION OF LIABILITY:** IN NO EVENT SHALL SEI BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR CONTINGENT DAMAGES, NOR SHALL ITS LIABILITY EXCEED THE PURCHASE PRICE OF THE ITEM WHICH GAVE RISE TO THE CLAIM, WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE.
11. **INDEMNIFICATION:** Purchaser agrees to defend, indemnify and hold SEI harmless from and against all claims of any kind, whether based on contract, tort or otherwise, for any losses, expenses, damages and liabilities (special, indirect, incidental, consequential or contingent) which may arise out of the use of items by Purchaser or others, or otherwise be based upon events occurring subsequent to shipment by SEI, except those caused solely by defects in materials or workmanship or by the sole negligence of SEI, which shall be governed by the provisions limiting liability set forth in Paragraph 10 or otherwise herein.
12. **ASSIGNMENT, WAIVER, EXPORT, LAW:** Purchaser shall not assign any of its rights or obligations without SEI's prior written consent. SEI's failure to exercise any of its rights shall not constitute a waiver or forfeiture of such rights, and specific statement of its rights herein shall not limit its rights otherwise available. Purchaser shall not take any action which might violate any governmental regulation pertaining to import/export, and any violation of this covenant shall be subject to its indemnification responsibilities set forth in Paragraph 11 above. Disputes relating to transactions between Purchaser and SEI shall be governed by and determined in accordance with the laws of The Commonwealth of Massachusetts, and the courts of such state shall have jurisdiction. Any action relating to transactions covered by these terms and conditions, other than a claim for non-payment, must be commenced within one year after the cause of action has occurred.

