



Terms and Conditions of Sales

1. **ACCEPTANCE.** This sales offer must be accepted in writing by Buyer. If for any reason Buyer should fail to accept in writing, any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, including Buyer's acceptance of all or any part of the products ordered by Buyer, shall constitute acceptance by the buyer of this sales offer and all of its terms and conditions. Any terms proposed in Buyer's acceptance of Seller's (hereafter 'Giga-tronics') offer which add to, vary from, or conflict with the terms herein are deemed to be material and are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. If this sales offer has been issued by Giga-tronics in response to an offer (or purchase order) and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this sales offer by Giga-tronics shall constitute an acceptance of such offer subject to the express conditions that the Buyer assent to such additional and different terms herein and acknowledge that this sales offer constitutes the entire agreement between Buyer and Giga-tronics with respect to the subject matter hereof and the subject matter of such offer and Buyer shall be deemed to have so assented and acknowledged unless Buyer notifies Giga-tronics to the contrary within 15 days of receipt of this sales offer.
2. **COMPLETE AGREEMENT.** This sales offer and any supplemental sheets and riders annexed hereto by Giga-tronics contains the complete, and entire agreement between the parties as to the subject matter hereof, and replaces and supersedes any prior or contemporaneous communication, representations, or agreements, whether oral or written, with respect to such subject matter.
3. **PRICE.** The price of the products that are the subject matter of this sale ("the Products") is as shown on the reverse side. In the event price is not shown on the reverse side, the price shall be the prevailing price set by Giga-tronics at the time the order is shipped by Giga-tronics. Prices do not include state and local use, sales, value added, property, ad valorem or similar taxes, nor any costs for transportation special packaging insurance, duties, tariffs, permits, inspections and the like. Any such costs or taxes incurred by Giga-tronics will be added to the invoice to be paid by Buyer.
4. **TERMS OF PAYMENT.** Invoices will be issued on or after the date of shipment and are due and payable within thirty (30) days from date of invoice. A service charge of 1 1/2% percent per month (18% per annum) will be charged on all accounts not paid when due. Giga-tronics reserves the right to change the payment terms provided herein, when, in Giga-tronics opinion, the financial condition or previous payment record of Buyer so warrants.

For orders received from outside the U.S.A Giga-tronics reserves the right to require from Buyer confirmed irrevocable letters of credit, cash in advance or other satisfactory security for performance of Buyers' obligation.

5. **F.O.B. and RISK OF LOSS.** Delivery is F.O.B. the place of shipment which is Giga-tronics factory designated on the reverse side. Buyer shall bear all risk of loss or damage to the Products when Products are put into the carrier's possession.
6. **DELIVERY.** All shipments are subject to Giga-tronics availability schedule. Giga-tronics will make every reasonable effort to meet every delivery date quoted, however, such delivery date is the best estimate based upon current and anticipated factory loads at the time of quotation. Giga-tronics will not be liable for any damages attributable to delays, including loss of use or for any



indirect or consequential damages. Giga-tronics will not be otherwise responsible for nonperformance or delay, due wholly or in part to circumstances it did not foresee or to causes beyond its control, including but not limited to failure in performance by suppliers or subcontractors, whether or not Giga-tronics allocates production and deliveries. Giga-tronics reserves the right to ship in advance of delivery dates.

Shipments, deliveries and performance of work by Giga-tronics shall at all times be subject to the approval of Giga-tronics Credit Department. Giga-tronics may, at any time, decline to make any shipment or delivery or perform any work except upon receipt of payment or security upon such terms and conditions as may be satisfactory to Giga-tronics credit department. Without limiting the operation of this paragraph, in the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against Buyer, or in the event of the appointment, with or without Buyer's consent, of a receiver or any assignee for the benefit of creditors, Giga-tronics may elect to cancel any unfilled order.

7. **SHORTAGES.** Claims for shortages must be presented in writing within seven (7) days from receipt of Products.
8. **PACKAGING.** Product: shall be packaged in a manner suitable for motor or air shipment from Giga-tronics factory. Costs associated with special packaging specified by Buyer shall be added to the invoice to be paid by Buyer. Products shall be shipped in accordance with standard commercial practices unless special shipping instructions are specified by Buyer.
9. **CANCELLATION and DEFERRED DELIVERY.** The Buyer's order, after acceptance by Giga-tronics, cannot be canceled or changed by the Buyer except upon payment to Giga-tronics of reasonable cancellation or change order charges. Charges shall include, but shall not be limited to, expenses already incurred, commitments made by Giga-tronics, resulting obsolete or excess product. If a return is due to factory error, there will be no restocking fee. If a return is for any other reason the following restocking fee shall be charged based on the time elapsed from the date of invoice (shipping) until the return authorization is received: after 0 to 30 days, 20%; 31 to 60 days, 40%; over 60 days, 60%. Returns on special products that have been built to order and/or are the products being shipped by Giga-tronics will be charged 90% of the purchase price upon cancellation of order. Change orders or specials must be submitted, in writing, for approval by an authorized representative of the Giga-tronics sales office.

When Products are ready but shipment is delayed at Buyer's request, Buyer shall pay reasonable charges for warehousing and other expenses of Giga-tronics incidental to such delay; and if the holding period is greater than ninety (90) days, such delay shall constitute a new order for the Products in determining the appropriate list price and shipping data.

10. **TESTING.** Giga-tronics shall, at Giga-tronics factory, complete the test procedures established by Giga-tronics which are applicable to the Products and demonstrate that the Products operate in the manner described in the specifications. If Buyer has indicated its intention to witness final testing of the Products, Giga-tronics will give buyer at least five (5) days advance notice of the date of said tests and Buyer shall pay the then prevailing costs associated with witnessing said test.
11. **WARRANTY.** Giga-tronics warrants that all Products manufactured by Giga-tronics conform to published Giga-tronics specifications and are free from defects in materials and workmanship for a period specified in the warranty provision incorporated in the product manual from the date of shipment when used under normal operating conditions and within the service conditions for which they were furnished ("Warranty").



The obligation of Giga-tronics arising from a Warranty claim shall be limited to repairing, or at its option, replacing without charge, any Product which in Giga-tronics sole opinion proves to be defective within the scope of the Warranty. In the event Giga-tronics is not able to modify, repair or replace nonconforming defective parts or components to a condition as warranted. Buyers shall be credited for their value at the original purchase price.

Giga-tronics must be notified in writing of the defect or nonconformity within the Warranty period and the affected Product returned to Giga-tronics factory or to an authorized service center within thirty (30) days after discovery of such defect or nonconformity.

For product warranties requiring return to Giga-tronics, products must be returned to a service facility designated by Giga-tronics. Buyer shall prepay shipping charges, taxes, duties and insurance for products returned to Giga-tronics for warranty service. Except for products returned to Buyer from another country. Giga-tronics shall pay for return of products to Buyer.

Giga-tronics shall have no responsibility hereunder for any defect or damage caused by improper storage, improper installation, unauthorized modification, misuse, neglect, inadequate maintenance, accident or for any Product which has been repaired or altered by anyone other than Giga-tronics or its authorized representative and not in accordance with instructions furnished by Giga-tronics.

12. EXCLUSION OF OTHER WARRANTIES. THE WARRANTY DESCRIBED ABOVE IS BUYER'S SOLE AND EXCLUSIVE REMEDY AND NO OTHER WARRANTY, WHETHER WRITTEN OR VERBAL, IS EXPRESSED OR IMPLIED. GIGA-TRONICS SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No statement, representation, agreement, or understanding, verbal or written, made by an agent, distributor, representative, or employee of Giga-tronics, which is not contained in the foregoing Warranty will be binding upon Giga-tronics, unless made in writing and executed by an authorized Giga-tronics officer. UNDER NO CIRCUMSTANCES SHALL GIGA-TRONICS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EXPENSES, LOSSES OR DELAYS (INCLUDING LOSS OF PROFITS) BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.
13. USE OF RECONDITIONED MATERIAL. Giga-tronics products may include materials that are new or reconditioned to like-new performance and functionality.
14. CHANGE FROM CATALOG. All designs and specifications shown in Giga-tronics catalog are subject to change without notice. Shipping weights and dimensions given in Giga-tronics catalog are as close to actual as practicable but are not guaranteed. No claims will be allowed because of any discrepancy between actual weight or dimensions of material shipped and listed data.
15. PATENT INDEMNITY. In the event that suit is brought against Buyer alleging that the use of the Products constitutes an infringement on any United States Patent, existing as of the date of invoice, Giga-tronics agrees (1) to reimburse Buyer for any and all expenses, other than compensation of its employees, which it may reasonably incur in defending the claim for patent infringement, (2) to pay any award of costs, damages or profits finally decreed therein against buyer and (3) in case the use of the Products is enjoined or in the case of a settlement, at Giga-tronics option, to procure for the Buyer the right to continue using said Products or replace the same with non-infringing Products or grant Buyer a credit for the depreciated value of said Products and accept return of the same. In view of Giga-tronics obligation hereunder, Buyer agrees to notify Giga-tronics promptly of any suit for infringement or claim of infringement made against Buyer in this



connection, and Giga-tronics shall have the right (but not the obligation) to defend or settle any such suit or claim at its own expense. The foregoing states the entire liability of Giga-tronics for patent infringement by Products furnished hereunder.

16. CONFIDENTIALITY. All information or data contained in any document, including but not limited to, processes, drawings, specifications, or other features supplied by Giga-tronics to buyer, shall be kept in strictest confidence. Such information or data shall not be published, reproduced, distributed, or caused to be transmitted to other parties without advance and express written permission of Giga-tronics.
17. WAIVER. Waiver by Giga-tronics of a breach of any of the terms or conditions of the contract of sale between the Buyer and Giga-tronics shall not be construed as a waiver of any other breach.
18. ASSIGNMENT. The rights, duties and obligations of Buyer herein shall not be assigned or transferred unless first agreed to by and authorized Giga-tronics officer.
19. CONTROLLING LANGUAGE. In the event that these terms and conditions shall be translated from English into another language, it is understood and agreed that, in a dispute between the parties as to interpretation, the English version shall control and be binding upon the parties hereto.
20. GOVERNMENT REGULATIONS. U.S. Government Procurement Regulations required to be included hereunder shall not be binding on either party unless specifically agreed to in writing prior to incorporation herein.
21. APPLICABLE LAW. The validity, performance and construction of these Terms and any sale made hereunder shall be governed by the laws of the State from which the Products are shipped as shown on the reverse side, and any litigation hereunder shall be brought in the court of the state in which the factory is located.
22. NOTICE. Notice to Giga-tronics must be in writing. Notice shall be deemed given when the written notice is received by Giga-tronics at Giga-tronics factory designated on the reverse side.
23. AFFIRMATIVE ACTION/EQUAL OPPORTUNITY. Pursuant to the Executive Order 11246 (as amended), the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Act of 1974, contractors and subcontractors are obliged to take affirmative action to provide equal employment opportunity without regard to race, color, religion, gender, national origin, disability or veteran status.

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United States Law Prohibits disposition of these commodities to North Korea, Vietnam, Cambodia (Kampuchea), or Cuba, unless otherwise authorized by the United States.