

PRO-COMM, INC.
1105 INDUSTRIAL PARKWAY, BRICK, NJ 08724
TELEPHONE (732) 206-0660 FAX: (732) 458-1919

SALES TERMS AND CONDITIONS

1. APPLICABILITY & ACCEPTANCE

ALL QUOTATIONS COVERING SELLER'S PRODUCTS ARE MADE AND ALL CONTRACTS OR PURCHASE ORDERS FOR SAID PRODUCTS ARE ACCEPTED AND ALL SHIPMENTS ARE MADE ON THE CONDITION THAT THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL BE APPLICABLE THERETO, AND SHALL SUPERSEDE ANY PROVISIONS ON BUYER'S PURCHASE ORDER OR OTHER DOCUMENTS ACCEPTED BY SELLER WHICH ARE AT VARIANCE WITH OR IN ADDITION TO THESE TERMS AND CONDITIONS. OTHER THAN ADDITIONAL PROVISIONS SPECIFYING CHARACTER OF THE ITEMS ORDERED, QUANTITY, PRICE, DELIVERY, INSURANCE AND SHIPPING INSTRUCTIONS, NO CHANGES OR ADDITIONS TO THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER. ALL CONTRACTS AND ORDERS ARE SUBJECT TO ACCEPTANCE BY SELLER AT ITS BRICK, NEW JERSEY OFFICE.

2. QUOTATIONS & PRICE

All quotations expire sixty (60) days after the date thereof unless otherwise stated in the body of the quotation. Prices are Net and are not, other than for a possible fast payment discount stated in the body of the quotation, subject to trade or other discounts and do not include local, state or federal sales, excise or similar taxes or cost of insurance or special packaging requested by Buyer, which when applicable shall be paid by Buyer. All other prices as listed on standard published price sheets must be verified with the factory before order placement as they are subject to change.

3. PAYMENT

All orders over \$50,000.00 shall require twenty-five percent (25%) payment with order at time of order placement. Unless otherwise specified on Seller's invoice, the invoice amount thereof becomes due and payable within thirty (30) days from the invoice date. If, in the judgment of Seller, the financial condition of the Buyer at any time does not justify shipment on the terms of payment originally specified, Seller may require full or increased partial payment in advance, may require Buyer to furnish an acceptable irrevocable letter of credit issued or confirmed by a prime U.S. Bank, or may ship COD. In the event of the bankruptcy or insolvency of the Buyer, whether under the Federal Bankruptcy laws or other insolvency, the Seller shall be entitled to suspend or terminate performance until Buyer is able to give Seller reasonable assurance of payment. The invoiced amount shall not be subject to set-off for any claims by Buyer against Seller, including any claims for products returned by Buyer for repair or correction of defects. Unless otherwise specified, prices for Products are quoted in US dollars. Any sum not paid by Buyer when due shall bear interest until paid at a rate of 1.5% per month (18% per annum), of the maximum rate permitted by law, whichever is less.

Irrevocable Letter of Credit or CIA by wire transfer in US currency prior to delivery for overseas sales.

4a. WARRANTY – NEW

Seller warrants all products manufactured by Seller to be free from defects in materials and in workmanship for a period of six (6) months from the date of first shipment from Seller factory. (Responsibility for failure of electron tubes will be at the discretion of the tube manufacturer and are subject to their analysis. Seller will repair, on a pro-rated basis, any equipment that fails during the warranty period wherein responsibility for the failure rests with the tube manufacturer and the defective tube has been repaired or replaced). The full equipment or equipment module (as applicable), is to be returned to Seller plant, freight prepaid.

Seller's obligation under this warranty is limited solely to repairing or replacing, at Seller's option, any product which shall, within 6 months after first shipment to the original purchaser, be proven by Seller's evaluation to be **defective**, and which has been returned to our factory, transportation prepaid. Repaired or replacement product will be under this warranty for the remainder of the original warranty period of the replaced or repaired product. Return freight to Buyer, for products found to be defective, will be paid by Seller into USA destination only.

This warranty does **not** extend to any product showing evidence of tampering, unauthorized repairs or modifications, abuse, misuse, breaking of warranty seals, negligence in use, *improper storage or handling*. No returns under this product warranty shall be accepted unless return has been authorized prior to shipping. In no event shall Seller's liability exceed the cost of the unit. Contact Seller for required RMA number for items under warranty.

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Any Repairs required as a result of improper handling or storage by the Carrier, resulting in damage to equipment, is not covered under this warranty. It is recommended that the Buyer obtain insurance from carrier and/or hold private coverage for such occurrence. Should Buyer suspect shipping damage, BUYER is to document with carrier and fully substantiate and initiate claim with Carrier/Insurer in timely manner. Upon receipt of damaged goods, Seller shall complete an evaluation and repair statement. Seller is not responsible if customer elects not to insure shipment with the Carrier/Insurer for shipment from Seller to destination. Unless Seller receives written notification from Buyer for refusal of shipping insurance coverage, or instruction for other appropriate insurance amount, Seller will insure all shipments with carrier for replacement value and bill Buyer's account.

Under no circumstances are the warranty seals to be broken or removed. If warranty seals are tampered with or removed, no warranty or right to claim shall exist.

This warranty is given by seller in lieu of any other warranties, express or implied. Seller disclaims any implied warranties, merchantability, or fitness for a particular purpose. Seller responsibility to repair or replace defective products is the sole and exclusive remedy.

4b. WARRANTY – REPAIR

Seller warrants all products manufactured by Seller to be free from defects in materials and in workmanship for a period of three (3) months from the date of first shipment from Seller factory. (Responsibility for failure of electron tubes will be at the discretion of the tube manufacturer and are subject to their analysis. Seller will repair, on a pro-rated basis, any equipment that fails during the warranty period wherein responsibility for the failure rests with the tube manufacturer and the defective tube has been repaired or replace). The full equipment or equipment module (as applicable), is to be returned to Seller plant, freight prepaid.

Repair warranty is valid only for parts replaced and work done by Seller during repair of equipment. Units purchased as refurbished equipment will receive a 3-month warranty on complete product.

Seller's obligation under this warranty is limited solely to repairing or replacing, at Seller's option, any product which shall, within 3 months of date of first shipment, be proven by Seller's evaluation to be **defective**, and which has been returned to our factory, *transportation prepaid*. Contact Seller for required RMA number for items under warranty.

This warranty does **not** extend to any product showing evidence of tampering, unauthorized repairs or modifications, abuse, misuse, breaking of warranty seals, negligence in use, or *improper storage or handling*. No returns under this repair warranty shall be accepted unless return has been authorized prior to shipping. In no event shall Seller's liability exceed the repair cost of the unit. Contact Seller for required RMA number for items under warranty.

Any Repairs required as a result of improper handling or storage by the Carrier, resulting in damage to equipment, is not covered under this warranty. It is recommended that the Buyer obtain insurance from carrier and/or hold private coverage for such occurrence. Should Buyer suspect shipping damage, BUYER is to document with carrier and fully substantiate and initiate claim with Carrier/Insurer in timely manner. Upon receipt of damaged goods, Seller shall complete an evaluation and repair statement. Seller is not responsible if customer elects not to insure shipment with the Carrier/Insurer for shipment from Seller to destination. Unless Seller receives written notification from Buyer for refusal of shipping insurance coverage, or instruction for other appropriate insurance amount, Seller will insure all shipments with carrier for replacement value and bill Buyer's account.

Under no circumstances are the warranty seals to be broken or removed. If warranty seals are tampered with or removed, no warranty or right to claim shall exist.

This warranty is given by seller in lieu of any other warranties, express or implied. Seller disclaims any implied warranties, merchantability, or fitness for a particular purpose.

5. DELIVERIES

Shipping dates are approximate and are predicated on prompt receipt from Buyer of all necessary information. Seller shall not be liable for delay or non-delivery due to causes beyond Seller's reasonable control, including but not limited to acts of God, acts of Government authority, shortage of materials, shortage of power or other public utility services, earthquakes, fires, floods, epidemics, unusually severe weather, strikes, riots, delays of common carriers, lockouts and inability to obtain acceptable products from Seller's vendors, labor disputes; all of which shall be considered excusable delays. If production is curtailed, as a result of any of the foregoing contingencies, Seller shall allocate available resources equitably among Seller's customers, or as required by any applicable Government priority rating. Subject to agreement of Seller, remedy for non-delivery or non-compliance to specification after delivery due date is cancellation without prejudice to Seller, provided warranty not voided by Buyer. In no event will Seller or its suppliers be liable for any lost revenue, profit, or data, or for special, indirect, consequential, incidental, or punitive damages however caused and regardless of the theory of liability arising out of the use of or inability to use the product, even if Seller or its suppliers have been advised of the possibility of such damages.

6. SHIPMENT

All shipments are F.O.B. Seller's factory unless otherwise specified. In the absence of specific instructions, the Seller will select the carrier. Risk of Loss and Title to the material shall pass from the Seller to the Buyer upon delivery thereof to the carrier, delivery service, or Buyer's representative. Delivery shall be deemed made upon transfer of possession to the carrier, delivery service, or Buyer's representative. Buyer shall be responsible for all freight, handling, insurance instructions and charges, duties, fees. Products held for Buyer, or stored for Buyer shall be at risk and expense of Buyer. In no event shall Seller have any liability in connection with shipment, nor shall the carrier be deemed to be an agent of Seller. Seller shall not be liable for damage or penalty for delay in deliver or for failure to file notice of any delay. If at the request of Buyer shipments are postponed more than thirty (30) days, invoices shall become due thirty (30) days after notice that products are ready for shipment. Claims against Seller for shortages must be made within five (5) days after arrival of shipment.

7. PROPRIETARY RIGHTS

Seller shall not be obliged to disclose to Buyer any proprietary information or to deliver to Buyer any artwork or tools including masks, drawings and production aids developed by Seller, whether in furtherance of this order or otherwise unless a written agreement signed by Buyer and Seller expressly provides for such disclosures or delivery. In the absence of such an agreement, Buyer shall acquire no right or property in such information, artwork, or tools. Seller shall have the right to exclude Buyer or Buyer's representatives from any area of Seller's plant access to which might reveal to Buyer or such representative's information which is proprietary to Seller or to third parties. The purchaser acknowledges that the equipment purchased contains designs and circuits which are proprietary to the Seller and that nothing contained in the purchaser's order shall allow reproduction, reverse engineering and/or manufacturing of the purchased equipment. Seller assumes no responsibility and/or liability for damages incurred by Purchaser for use of purchased items.

8. PATENTS & OTHER INTELLECTUAL PROPERTY

IT IS EXPRESSLY AGREED THAT SELLER PROVIDES NO INDEMNITY TO BUYER, WHETHER DIRECTLY OR INDIRECTLY, WITH RESPECT TO INFRINGEMENT OF PATENT, COPYRIGHT, TRADEMARKS OR OTHER FORMS OF INTELLECTUAL PROPERTY BY GOODS SUPPLIED BY SELLER HEREUNDER.

9. ASSIGNMENT

The Buyer shall not assign this order, any interest herein, or any rights there under without the prior written consent of Seller.

10. FAIR LABOR STANDARDS ACT

Seller represents that products furnished hereunder are produced in compliance with the Fair Labor Standards Act of 1938 as amended and valid regulations and orders of the United States Department of Labor issued hereunder. Seller considers this statement as the written assurance contemplated by such act.

11. US EXPORT LAWS

Products are offered to sale to destinations within the United States unless otherwise noted in quotation. Responsibility is with the Buyer to ensure re-shipment of products outside the United States is in accordance with US exporting laws. Seller shall bear no responsibility for the resale of any product to a foreign buyer unless agreed to in writing by the Seller. Buyer shall obtain all licenses, permits, and approvals required by any government and shall comply with all applicable laws, rules, policies, and procedures of the US Government. Shipment made to designated freight forwarder. All shipping charges, insurance, handling fees, export licenses, are responsibility of Buyer.

12. LIMITATION OF LIABILITY

Except as other provided by an express or implied warranty, the Seller shall not be liable to Buyer or any other, for use and or consequential damage resulting from any use, defect or deficiencies in accepted items. No intended use is offered or implied.

13. GENERAL TERMS

The validity, interpretation, and performance of this agreement shall be controlled by and construed under the laws of the state of New Jersey, United States of America, as if performed wholly within the state and without giving effect to the principles of conflict of law. No waiver of right under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement