

# CONDITIONS OF SALE

## **1. ACCEPTANCE**

All orders are subject to acceptance by DLI (AKA Dielectric Laboratories, Inc.) at its home office in Cazenovia, New York, USA.

Acceptance of Buyer's order is expressly made conditional on Buyer's assent to these terms and conditions, unless otherwise formally agreed in whole or part. Buyer's obligations hereunder may not be assigned by Buyer without the specific prior written authorization of DLI. Unless Buyer notifies DLI in writing from the date hereon of its objections to any of these Conditions, it will be deemed to have accepted the Conditions. DLI's failure to object to provisions contained in any communications from Buyer shall not constitute a waiver of the provisions of the terms and conditions herein. All clerical errors are subject to correction. DLI assumes the right to decline any Purchase Order. Telephone orders are accepted at the risk of the caller as shipments may be made before receipt of confirmation.

The laws of the State of New York, to whose jurisdiction the parties hereby submit in the event of any unresolved dispute, shall govern this agreement. If a dispute is not resolved per paragraph 12 of this document, any legal action shall be commenced only in the Courts serving the County of Madison, New York USA. This agreement shall be binding upon and inure to the benefit of DLI and Buyer and each of their affiliates, heirs, successors and permitted assigns.

## **2. PRICE AND DELIVERY**

Delivery will be Ex-Factory Cazenovia, NY, USA. DLI will use all reasonable means to make shipment within the time estimated, but assumes no liability for loss or damage from late delivery or non-performance caused by strikes, accidents, fires, manufacturing failures, or any other causes which are beyond its reasonable control. The stated shipping date is good faith estimate based on DLI's best information. All parts quoted "in-stock" are subject to prior sale.

On custom made parts or assemblies, DLI reserves the right to ship 5% over or under the total order quantity ordered and performance will be considered complete on that basis. On standard products, DLI will endeavor to ship exact quantities as ordered.

Price may be adjusted to conform to actual quantity delivered at DLI's option if Buyer changes quantity during the term of the order.

All prices are stated and payable in U.S. dollars. Prices and fees quoted are for prompt acceptance. The quotation is effective for ninety (90) days.

Precious metal market costs may require a precious metal factor as an adjuster to the pricing. If so, the Buyer will be notified by DLI in advance and the adjuster will be stated on applicable invoice(s).

Unless expressly agreed in writing, pricing does not include consignment inventory provisions. Consignment is an additional expense and liability, and pricing and fees can therefore be modified to reflect same at the expense of the Buyer.

## **3. SELECTION OF MATERIALS**

The determination as to the suitability of any DLI materials to the specific needs of Buyer is solely the Buyer's prerogative and responsibility. DLI may provide recommendations. Property charts will be sent on request which give typical physical and electrical characteristics of DLI's materials. All technical information, data, and recommendations are based on tests and accumulated experience and data which DLI believes to be reliable. However, the accuracy and completeness thereof is not guaranteed and suitability is to be verified by the Buyer.

## **4. WARRANTY**

DLI warrants that the goods delivered hereunder will conform at the time of delivery to the accepted applicable specifications, sampling plans, and/or inspection techniques. Products alleged to be defective shall be called to DLI's attention with thirty (30) days after delivery to Buyer. Unless impractical, DLI prefers verification samples prior to the issuance of return authorization. If authorization is given for return to DLI, shipment by Buyer is to be made within (10) days. DLI's only obligation shall be, at its option, to replace or credit such quantity of the product which is disclosed by DLI's inspection to have been defective when shipped. DLI shall not be held for any injury, loss, or damage direct or consequential arising out of the use of or the inability to use the product. Before using, Buyer shall determine the suitability of the product for its intended use and Buyer assumes all risk and liability whatsoever in connection therewith. No other express warranty is given and the foregoing may not be changed except by an agreement signed by an officer of DLI. Other than warranty of title, no implied warranties of merchantability and fitness apply in respect to material, parts, and their assemblies.

## **5. CANCELLATION AND DELAYS**

Cancellation of an order or any portion thereof shall be subject to the following terms at DLI's option. Buyer is fully responsible for finished goods, work in process, and all related materials. At DLI's option, Buyer may be required to pay an adjusted price, based on the quantity of all goods which shall have been completed. In addition to such payment, as to any part of the order which shall be in process, Buyer shall pay a sum equal to the same proportion of the

adjusted price as the degree of completion of the goods in process on date cancellation is received bears to full completion. Portions of orders not yet initiated in production can be cancelled without charge. Buyer requests to return excess inventory standard products are at DLI's option and subject to review of DLI's inventory position, date code of stock, and DLI issuance of a credit of a maximum of 50% of original invoice price after DLI receives the authorized return of said product, with the specific credit percentage to be determined by DLI's inventory of part number(s) involved and review of Buyer's outstanding payments, if any. Custom parts cannot be returned for any reason except defect. Buyer requests to return standard parts due to customer error in ordering will be considered if request is within thirty (30) days of invoice date, Buyer orders replacement parts, Buyer accepts 15% re-stocking fee, and Buyer pays freight costs. For delays, scheduled shipments within thirty (30) days cannot be delayed; balance of order can be delayed up to twelve (12) months from the original order date but no further delay is permitted; or Buyer can request DLI to offer cancellation charges as defined within paragraph 5.

## **6. CREDIT**

DLI's terms are Net, payable thirty (30) days from the date of the invoice. If, in DLI's judgement, the financial condition of the Buyer at any time during the manufacturing period or at the time the merchandise is ready for shipment does not justify continuance of the work or shipment of the merchandise, DLI may at its option, require full or partial payment in advance or may cancel an order or any portion thereof. For small or occasional orders, DLI strongly recommends the use of Master Card/VISA/American Express.

## **7. TOOLING/NRE**

A tooling charge or NRE charge may be applicable to cover partial tooling costs and/or development costs for new and revised parts. This will be a one-time service charge covering a portion of the preparatory operations necessary to manufacture Buyer's parts, but does not constitute payment for any resulting dies, special tools, or engineering which remain the property of DLI. Tooling will be reserved for use in serving Buyer, and there will be no charge for maintenance unless specifically stated in the face thereof. When tooling has not been used for purchaser over a three-year period, DLI reserves the right to scrap said tooling without notice. Any modifications to the tooling required due to Buyer's specification change may require additional charges. DLI will maintain ownership of any designs, processes, software, invention and artwork that DLI provides, or which are necessitated by the design, engineering, and manufacture of the product to customer specifications.

## **8. LAWS, CODES, REGULATIONS, SAFETY**

Compliance with laws, codes, and regulations relating to the goods and their use is the sole responsibility of Buyer, and DLI makes no warranty or representation with respect hereto. Buyer assumes the responsibility for providing and installing any and all devices for the protection of safety and health and shall indemnify and hold harmless DLI against any expense, loss, or damage which DLI may incur or sustain as a result of Buyer's failure to do so.

## **9. TAXES AND ASSESSMENTS**

All taxes and assessments, whether federal or state, now or hereafter imposed on the sale of goods covered by this quotation, shall be for the account of Buyer. If applicable and required, Buyer shall furnish DLI with a valid resale certificate for the designated jurisdiction.

## **10. PATENTS AND TRADEMARKS**

DLI assumes no liability, consequential or otherwise, for and Buyer agrees to hold DLI harmless against infringement of patent claims covering completed equipment of which a DLI product forms only a part or subassembly or any assembly, circuit, combination, method or process in which any such products may be used, or from any trademark infringements involving any marking or branding not applied by DLI or involving any marking or branding applied at the request of Buyer. In addition, Buyer agrees to indemnify and hold DLI harmless against any claims resulting from the production of articles or materials to Buyer's specifications or from the production of articles or materials designed by DLI to meet Buyer's requirements or arising out of the use of any equipment, materials, parts, or machinery furnished by Buyer in producing articles, materials, parts, or equipment to Buyer's specifications.

## **11. LIABILITY**

In no event shall DLI be liable for any indirect or consequential damages such as, but not limited to, loss of anticipated profits or other economic loss in connection with or arising out of the existence of, the furnishing, maintenance, repair, functioning or the customer's use of products sold pursuant to these provisions.

## **12. DISPUTE RESOLUTION**

In the event of any unresolved dispute between the parties with respect to this order, the matter shall be expeditiously submitted to Buyer's President and DLI's President for further consideration and discussion to attempt to resolve the dispute. Time is of the essence. The Buyer and DLI agree to mutually pursue, as possible and practical, an amicable settlement of the dispute in a reasonable, timely manner. If Buyer's President and DLI's President are unable to resolve the dispute within a reasonable time of not less than ninety (90) days, either party may pursue its rights and remedies created by these Conditions of Sale and/or available at law or in equity in the Courts described in paragraph 1.