

**TERMS AND CONDITIONS OF SALE - DAISY DATA DISPLAYS, INC. (SLST&CdddJan05)**

**1. SCOPE** a) All sales by Daisy Data Displays, Inc. (hereinafter "Daisy") of any of its products, including associated engineering, service and/or field labor (hereinafter "Equipment"), to any original purchaser thereof (hereinafter "Purchaser") are subject to these Terms and Conditions of Sale which constitute an integral part of the contract for the sale of Equipment which results from a Daisy offer of quotation.

b) Acceptance of Daisy's offer of quotation by Purchaser is expressly limited to: 1) Purchaser's issuance of its purchase order or subcontract referencing and incorporating, without material changes, Daisy's quotation subject to Daisy's written acceptance; or, 2) Purchaser's acceptance of Equipment from Daisy based on Daisy's written acceptance of Purchaser's verbal or confirming order.

**2. TERMS OF PAYMENT** All equipment sold to Purchaser will be invoiced upon shipment by Daisy; however, all non-recurring engineering ("NRE") and/or application engineering ("AE") charges must be paid: 40% upon placement of the order; 40% upon release of the drawings for manufacturing and 20% Net 30 Days. Upon proper credit approval, Daisy's terms for equipment invoices are Net 30 Days. All overdue balances will be subject to an interest charge, based on the total balance due, of the maximum legal limit in Purchaser's legal jurisdiction. Purchaser agrees to pay all attorney's fees, court costs and other expenses incurred by Daisy in collecting such overdue balances. Full payment prior to shipment of the Equipment may be required or the order may be canceled if, in Daisy's sole judgment, Purchaser's financial condition so warrants.

**3. TAXES/EXPORT** It is Purchaser's obligation to provide Daisy with a valid tax exemption certificate; Purchaser shall be solely responsible for the payment of any excise, privilege, sales and/or use tax applicable to the sale, delivery, installation and/or use of the Equipment. Purchaser is solely responsible for all tariffs, duties, excises and other taxes or charges levied on Equipment exported by Daisy at Purchaser's direction, or by Purchaser, from the U.S.A. Purchaser shall assume all responsibilities and liabilities to understand and comply with technology export regulations and all other export laws of the U.S.A. Purchaser agrees to indemnify and hold harmless Daisy for all such liabilities or for violations of any U.S.A. export regulation or law when Daisy is acting in accordance with Purchaser's directions.

**4. DELIVERY** Delivery dates are good faith estimates only and will be made **F.O.B. Daisy's manufacturing facility**, to a carrier selected by Daisy unless Purchaser specifies use of a particular carrier. **Daisy shall not be liable for any direct, consequential, secondary or incidental damages, however arising, due to late delivery.** Risk of loss of the Equipment shall pass to the Purchaser upon delivery to Purchaser, Purchaser's agent or to any carrier for delivery to Purchaser. Purchaser shall inspect all Equipment, immediately upon receipt, for visible and/or concealed damage and shall immediately report such damage to the carrier for remedy and to Daisy.

**5. CANCELLATION/CHANGES** Orders are subject to cancellation or change by Purchaser, after acceptance by Daisy, only with the prior written consent of Daisy and upon terms that will fully indemnify and compensate Daisy for all loss, cost and expense, including but not limited to: loss of expected profit and the cost of purchased dedicated components/materials, caused by such cancellation or change. Notwithstanding the foregoing, all NRE and/or AE charges must be paid in full prior to any cancellation becoming effective. Schedule changes which cause Daisy's year-end inventory of items for Purchaser's Equipment to exceed the planned amount will require the payment of a non-refundable inventory impact charge of 20% of the value of the items affected.

**6. RETURNS FOR CREDIT** Returns by Purchaser for credit will be accepted only within ninety (90) days after original shipment from Daisy and only with the prior, written approval of Daisy, with shipment to the factory prepaid and utilizing the original shipping containers, or replacement containers purchased from Daisy. Returns will be subject to complete inspection by Daisy. Returns will be subject to a 20% restocking charge (minimum of \$150.00) plus any additional expenses incurred in restoring equipment to salable condition, as determined by Daisy in its sole discretion.

**7. LIMITED WARRANTY** a) Daisy warrants that all Equipment sold hereunder, with the exception of Value Added Resale (VAR) major components which are clearly labeled, will be free of defects in design, material and workmanship and will perform in accordance with Daisy's Specifications for a period of twelve (12) months from date of shipment by Daisy. The warranty of the VAR components shall be that of the original manufacturer.

b) Daisy, at its sole option, will repair or replace, F.O.B. Daisy's plant, Equipment found to be defective, but Daisy will not be responsible for freight from Purchaser to Daisy's plant, removal and reinstallation labor or for resolution of general systems problems outside of the Equipment specification.

c) This limited warranty is contingent on the following conditions being met: 1) Purchaser has notified Daisy promptly of any claim under this warranty; 2) Purchaser has returned the defective Equipment, freight prepaid, in its original container or one purchased from Daisy and has used its best efforts to pack it properly; 3) Daisy's test of the defective Equipment, or investigation into the circumstances, does not disclose any cause of malfunction due to Purchaser's or any third person's misuse, neglect, improper installation or testing, unauthorized attempt to repair, tampering, altering or removing serial numbers; damage caused by carriers, improper storage, failure to assign competent/trained personnel, failure to bring any suspected discrepancy or error promptly to Daisy's attention; any cause beyond the Equipment's intended use; or accident, fire or other hazards beyond Daisy's control.

**8. LIMITS OF LIABILITY AND INDEMNIFICATION** The limited warranties of Daisy set forth herein are in lieu of, and Purchaser hereby waives, all other warranties, express or implied, and all other obligations or liabilities on the part of Daisy, which neither assumes, nor authorizes others to assume for it, any other obligation or liability in connection with the warranted items or any part thereof. **Daisy hereby excludes from any order for Equipment the implied warranty of merchantability.** Purchaser and Daisy agree that there are no warranties which extend beyond the description of the Equipment in Daisy's offer of quotation. **DAISY HEREBY EXCLUDES THE IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE FROM ANY ORDER FOR EQUIPMENT. In no event will Daisy be liable for increased manufacturing/process costs, loss of profit, loss of business, loss of good will or any other consequential, secondary or incidental damages, for any reason or however arising.**

**9. FORCE MAJEURE** Daisy shall not be responsible to the purchaser, or to any third party, for any damages, including without limitation, direct, incidental, secondary or consequential damages, arising out of the non-performance or delay in performance of the terms and conditions herein caused by events beyond its reasonable control, including, but not limited to: acts of God; acts or omission of any Government in its sovereign or contractual capacity; wars; riots; strikes; unavailability of suitable and sufficient labor, materials, fuel or manufacturing capacity; delays in transportation or communication modes; fires; floods; epidemics or quarantine restrictions; customs delays; embargoes; accidents or any unforeseen event beyond its control.

**10. PROPRIETARY RIGHTS** Purchaser agrees that Daisy retains proprietary rights in and to all product specifications, data, designs, engineering details, discoveries, patents, trade secrets, and other proprietary rights relating to the Equipment and its associated firmware and software whether or not NRE and/or AE charges are absorbed by Daisy or shown as a separate item to be paid by Purchaser. The Equipment is offered for sale and is sold by Daisy subject in every case to the condition that such sale does not convey any right or license, expressly or by implication, estoppel, or otherwise, to manufacture, duplicate, or otherwise copy or reproduce any of the Equipment or related firmware and software. If title is to pass on any intellectual property paid for by Purchaser, it must be clearly stated on the face of the quotation or order and will be subject to written acceptance by Daisy.

**11. SAFETY NOTICE** Purchaser acknowledges that **process/manufacturing systems improperly installed, maintained or operated can pose serious and dangerous threats to worker safety, environmental integrity and product/process quality.** Daisy's Equipment is provided with various safety, performance and operating limits, designs and devices which, if disconnected, altered, tampered with or changed by Purchaser, Purchaser's agents or other acting on Purchaser's behalf, will become Purchaser's sole risk and responsibility and such actions will absolve Daisy of any obligations and liabilities with respect to the function of such limits, designs and devices, and further, Purchaser shall indemnify and hold Daisy harmless for any damages due to such action.

**12. COMPLIANCE** Daisy will be responsible for compliance with applicable Federal, State, Province or Local governmental safety, environmental, licensing, permitting or performance statutes, ordinances, rules or regulations only to the extent specifically noted on the face of Daisy's offer of quotation, and then only with respect to such statutes, ordinances, rules or regulations which are published and in force as of the date of the offer of quotation.

**13. GENERAL** a) No waiver or change of any provision shall be effective unless made in writing and approved by both parties. No waiver of any breach of any provision shall constitute a waiver of any subsequent breach of the same or of any other provision. Headings are for the convenience of the parties only and have no legal or contractual significance.

b) Any order resulting from Daisy's offer of quotation shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, U.S.A., and it is agreed by both parties that any action arising out of, or related to, such order shall be filed and tried in a court of competent jurisdiction in York or Dauphin County, Pennsylvania, and in no other place. In the event that any of the provisions of such order shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions shall remain in full force and effect.

All notices required or permitted hereunder shall be in writing and shall be considered given if sent by prepaid first class mail or overnight delivery service, with receipt verification requested, to the other party at its home office, its principal place of business, or any place it may have designated in writing.