

TERMS AND CONDITIONS OF SALE



The following terms and conditions of sale (these "Terms") shall apply to all products (and related services) sold, provided or supplied, whether domestically or internationally, by Diversified Technology Group, Inc. ("DITEK") located at 1720 Starkey Road, Largo, Florida 33771. The purchasing entity, party placing an order, and/or buyer shall be referred to herein as the "Customer".

1. ORDER ACCEPTANCE: Order(s) issued by Customer to DITEK are not binding to DITEK unless DITEK communicates its acceptance of such order(s) in writing (or through similar communications such as via an email sent by DITEK). DITEK reserves the right, at its sole discretion, to refuse orders. A minimum order of \$100 is required. Acceptance of Customer order(s) shall represent DITEK's binding agreement between DITEK and Customer. By placing an order with DITEK (and independently, by accepting product from DITEK), Customer agrees that the parties will submit to and be governed by these Terms. These Terms prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

2. ITEMS PURCHASED: Product purchased by and sold to Customer by DITEK, unless otherwise agreed to in writing by DITEK, shall be DITEK's standard products as specified in the order, DITEK's quotation or acknowledgement.

3. RETURNED PRODUCTS: Except as otherwise expressly provided in DITEK's Warranty Returns Policy, a return material authorization (RMA) must be obtained from DITEK prior to returning product to DITEK. Unless otherwise agreed by DITEK, returned product must be in the original and un-opened packaging, in saleable condition, and product must have an original invoice date not older than 6 months from return request. Product must be shipped freight prepaid to DITEK's warehouse at the address set forth above, and received within 60 days from the RMA approval date. Product returned without the appropriate return material authorization will not be accepted by DITEK and will be returned to the Customer. DITEK reserves the right to inspect product prior to authorizing Customer's return. Upon receipt of the returned product and confirmation that the returned product has an appropriate return material authorization and meets all conditions set forth herein for returned product, DITEK will issue a credit to Customer in an amount equal to the original billing price or current price of the product, whichever is lower, and reserves the right to charge a re-stocking fee to the Customer including by way of offset against such credit.

4. SHIPMENT/DELIVERY: Customer acknowledges that DITEK's shipping dates are estimates and are subject to change by DITEK. Unless otherwise agreed to in writing by DITEK, delivery terms shall be F.O.B. DITEK's shipping point. DITEK reserves the right to make partial shipments. Risk of loss or damage and responsibility to insure product shall pass from DITEK to Customer upon delivery to a carrier for shipment to Customer. Title passes to Customer upon delivery of the products at the delivery point. Any claims for shortages or damages suffered in transit are the responsibility of Customer and shall be submitted by Customer directly to the carrier. Shortages and/or damages must be acknowledged and signed for at the time of delivery. If products are held by DITEK for Customer at Customer's request or due to Customer's failure to supply shipping instructions, DITEK may invoice Customer for the full purchase price of the product and Customer agrees to make payment based on such invoice date. Product held for Customer by DITEK, for whatever reason, is held at Customer's risk and Customer shall reimburse DITEK for any insurance, storage or other costs incurred by DITEK.

5. PRICES: Prices quoted by DITEK shall remain in effect for the period stated in DITEK's quotation or acknowledgement, or, if none is stated, for a period of thirty (30) days after the date of such quotation or acknowledgement. If DITEK does not receive, within such time period, an unconditional authorization from Customer to ship product, but later receives such authorization, DITEK shall have the option to change the price

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for such product to the current price at the time of shipment. Prices do not include taxes, duties or charges imposed on the manufacture, sale, delivery, or use of the product. Customer shall be responsible for all such taxes, duties and charges.

6. PAYMENT TERMS: Payment is due in U.S. currency net thirty (30) days from the date of DITEK's invoice. Partial shipments of product will be invoiced and are payable as they occur in accordance with these Terms. Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily. Customer shall reimburse DITEK for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which DITEK does not waive by the exercise of any rights hereunder), DITEK shall be entitled to suspend the delivery of any products if Customer fails to pay any amounts when due hereunder or otherwise breaches any of these Terms.

7. BUSINESS INTERRUPTION AND DELAYS: DITEK shall not be liable or responsible for cost, expense or damage due to non-performance or a delay in performance where such non-performance or delay is due to causes beyond its reasonable control, including, but not limited to, natural disasters, acts of government, power failure, fire, flood, acts of God, labor disputes, riots, acts of war, epidemics, or material and transportation shortages. Shipping of product may be suspended for an appropriate period of time or cancelled by DITEK upon notice to Customer of the foregoing, but other DITEK and Customer performance hereunder shall otherwise remain unaffected.

8. EXCLUSIVE AND LIMITED WARRANTY:

DITEK's limited warranties, which are available at <http://www.diteksurgeprotection.com/sales-warranty-and-return-policies.html>, are the only warranties applicable to the sale of DITEK's products and the terms, conditions and limitations of such warranties are incorporated by reference herein. DITEK's limited warranties may be modified only by a writing signed by a duly authorized officer of DITEK. Customer assumes all other responsibility for use in combination with other goods whether supplied by DITEK or otherwise. Customer acknowledges that any technical advice furnished by DITEK with respect to the use of the products is given without charge and DITEK assumes no obligation or liability to Customer for the advice given or results obtained; all such advice is given by DITEK and accepted by Customer at Customer's own risk.

TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, DITEK'S LIMITED WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE OF THE PRODUCTS HAS BEEN DISCLOSED TO DITEK IN SPECIFICATIONS, DRAWINGS, OR OTHERWISE AND WHETHER OR NOT THE PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY DITEK FOR CUSTOMER'S USE OR PURPOSE.

DITEK's limited warranty obligations are conditioned upon timely receipt of all payments in accordance with the payment terms specified herein. During the period any amounts are overdue from Customer, DITEK shall have no obligations under any of the limited warranties or any other provisions herein.

9. PATENTS AND COPYRIGHTS: Except as hereinafter set forth, DITEK warrants that products manufactured by DITEK provided hereunder do not infringe upon any valid U.S. patent or copyright in existence on the date of shipment. DITEK shall have no liability to Customer with respect to any claim of patent and/or copyright infringement based upon: (a) combination or utilization of products furnished under these Terms with equipment or devices not manufactured by DITEK, (b) the modification by Customer of products furnished under these Terms, (c) DITEK's compliance with Customer design specifications, or (d) products manufactured by a third party ("Third

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Party Product”), which are contained in, incorporated into, attached to or packaged together with, the products. Third Party Products are not covered by the warranty in this Section 9. For the avoidance of doubt, **DITEK MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** This Section 9 states the entire liability of DITEK with respect to infringement of patents, copyrights or other intellectual property rights.

10. LIMITATION OF LIABILITY, AND OF CONSEQUENTIAL AND OTHER DAMAGES: IN NO EVENT IS DITEK OR ITS REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT DITEK WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL DITEK’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED (A) ONE (1) TIMES THE TOTAL OF THE AMOUNTS PAID TO DITEK UNDER THESE TERMS IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (B) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), WHICHEVER IS LESS. THE FOREGOING LIMITATIONS APPLY EVEN IF THE DITEK’S REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

11. MODIFICATIONS: DITEK reserves the right to modify the model, design and specifications of its products without obligation to previously sold products sold. Customer may, in writing, within the scope of an accepted order, request changes in the established specifications. If DITEK agrees to such Customer requested changes and these changes alter the amount due under the purchase order or the time required for performance thereunder, the price of the products ordered, any license fees and/or the time for performance shall be equitably adjusted.

12. CANCELLATION: These Terms or any part of them are subject to cancellation by DITEK if the conditions specified herein are not met by Customer or if Customer becomes insolvent or bankrupt. In the event of cancellation for this reason, DITEK is under no obligation to pay Customer for any expenses, costs, claims, or liabilities incurred as a result thereof, and DITEK may retain any portion of the purchase price pre-paid by Customer as liquidated damages. DITEK retains all rights to any other legal remedies it may have against Customer. Customer may cancel orders only upon reasonable advance written notice to DITEK and upon payment to DITEK of DITEK’s cancellation charges, which will include all costs and expenses incurred by DITEK in the course of performance herein and amounts adequate to cover any commitments made by DITEK and DITEK’s anticipated profit on the sale of the products.

13. DRAWINGS/DOCUMENTATION/Written SPECIFICATIONS: DITEK’s prints, drawings or written specifications (and the technology depicted therein) which are furnished to Customer in connection with these Terms are the sole property of DITEK and DITEK retains all patent, copyright and other intellectual property rights, including, without limitation, exclusive rights of use, license, or sale. Customer’s possession of such prints, drawings or specifications does not grant Customer any rights or license, express or implied therein; and Customer shall, upon DITEK’s request, return immediately all copies of such prints, drawings and specifications to DITEK.

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14. COMPLIANCE WITH LAWS: Customer represents and warrants to DITEK that it is in compliance with all laws applicable to these Terms, the DITEK product and the operation of its business. Customer covenants that shall at all times comply with all laws. Without limiting the generality of the foregoing, Customer shall at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses and permits materially necessary to conduct its business. Customer acknowledges that the DITEK products, including any documentation and any related technical data included with, or contained in, such DITEK products may be subject to US export control Laws and regulations, including the Export Administration Regulations promulgated under the Export Administration Act of 1979, and the International Traffic in Arms Regulations administered by the US Department of State. Without limiting the generality of the foregoing, Customer shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any DITEK product to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any DITEK products is prohibited by applicable federal or foreign Law. Customer shall be responsible for any breach of this Section by its and its successors' and permitted assigns', affiliates, employees, officers, directors, customers, agents, distributors, resellers or vendors. Without limiting the generality of any of the foregoing, DITEK shall comply with all applicable federal and foreign laws, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting or releasing any DITEK products.

15. NUCLEAR/MEDICAL AND DENTAL: PRODUCTS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. PRODUCT AND SERVICES SOLD HEREUNDER ARE ALSO NOT FOR USE IN ANY LIFE SUPPORT, PATIENT-CONNECTED, OR APPLIED MEDICAL AND DENTAL APPLICATIONS. Customer accepts products and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers of Customer and agrees to defend, indemnify and hold harmless DITEK from any claims, losses, suits, judgments and damages, including, without limitation, incidental and consequential damages, arising from such use or failure to communicate the same, whether the cause of action be based in tort, contract or otherwise, including against any allegations that DITEK's liability is or should be based on negligence or strict liability.

16. APPLICABLE LAW, JURISDICTION AND VENUE: These Terms shall be governed by and performance construed in accordance with the domestic laws and Uniform Commercial Code as adopted in the State of Florida, without reference to its choice or conflict of laws principles. For international sales, the parties mutually agree that the rights and obligations of the parties herein shall be determined without reference to the provisions of the U.N. Convention on Contracts for the International Sale of Goods, as amended and subsequent acts thereto. The Parties also agree that, as to any litigation concerning these transactions and/or these products, the Courts of the State of Florida (in Pinellas County, Florida) and/or the U.S. District Court for the Middle District of Florida (Tampa Division) shall have the exclusive jurisdiction and that the venue shall only be proper in those Courts.

17. SEVERABILITY: If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. On a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify these Terms to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

18. ASSIGNMENT/DELEGATION: Customer shall not assign any rights or delegate any duties hereunder without the prior written permission of DITEK. Any assignment or delegation without such permission shall be void.

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19. MODIFICATIONS: Except as may be specifically provided for herein, any agreement which modifies, changes, or supplements these Terms or the documents referenced herein shall only be valid if in writing and signed by a duly authorized officer of DITEK. No other DITEK associate or representative is authorized to alter these Terms.

20. FINAL AND COMPLETE AGREEMENT: These Terms, and other documents referenced herein, any Distributor Agreement with the Customer that is in effect, and any DITEK quotation or acknowledgement and documents specifically referenced therein, represent the final and complete agreement between the parties with respect to the sale of products and supersede all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject matter.

21. SURVIVAL. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms including, but not limited to, Sections 3, 6, 8, 9, 10, 13, 14, 15 and 16 – 23.

22. NO THIRD-PARTY BENEFICIARIES. These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. CONFIDENTIAL INFORMATION. All non-public, confidential or proprietary information of DITEK, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by DITEK to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with these Terms is confidential, solely for the use of performing these Terms and may not be disclosed or copied unless authorized in advance by DITEK in writing. Upon DITEK’s request, Customer shall promptly return all documents and other materials received from DITEK. DITEK shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) properly known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

24. RELATIONSHIP OF THE PARTIES. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.