



DI VITA ENGINEERING LLC GENERAL TERMS AND CONDITIONS OF SALE

1. **Acceptance of Terms.** All sales by Di Vita Engineering LLC ("Di Vita Engineering") to any person (a "Buyer") of the units of products specified in the document to which these Terms and Conditions of Sale are attached or referred to (the "Product") will be governed by these Terms and Conditions of Sale. If the terms or conditions of any offer or acceptance from Buyer differ from or seek to add to or supplement these Terms and Conditions of Sale, these Terms and Conditions of Sale shall constitute a counter-offer and will not be effective as an acceptance of Buyer's differing, additional or supplemental terms and conditions, all of which are hereby rejected. THESE TERMS AND CONDITIONS OF SALE SHALL BE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF AGREEMENT BETWEEN DI VITA ENGINEERING AND BUYER.
2. **Prices and Payment.** All price quotations are subject to confirmation and are non-binding. Unless otherwise agreed to by Di Vita Engineering in writing, all prices for the sale of Product for delivery in the United States or other countries are to be paid in United States Dollars. All payments are due and payable in advance. Di Vita Engineering reserves the right to require alternative payment terms, including without limitation letter of credit.
3. **Deliveries/Delay in Delivery.** All delivery times are estimates only, and in no event shall Di Vita Engineering be liable for any delay in delivery or assume and liability in connection with shipment. Unless otherwise agreed to in writing by Di Vita Engineering, all product shall be delivered EXW (Incoterms 2010) from the point of shipment. Title to and risk of loss or damage to all or any portion of the Product shall pass to Buyer upon tender of the Product for delivery at Di Vita Engineering' plant point of shipment.
4. **Limited Warranty.** Subject to the limitations set forth in these Terms and Conditions of Sale, Di Vita Engineering warrants (the "Limited Warranty") that all Product sold by Di Vita Engineering will conform to the published specifications therefore and shall be free from defects in materials and workmanship under normal use, handling and service one year warranty. Di Vita Engineering shall have no obligation under the Limited Warranty or otherwise, and this Limited Warranty does not apply to Products which are (a) identified by Di Vita Engineering as a pre-production product, alpha, beta or similar product or a prototype, (b) specials, modifications, or customized items (including custom patch cables) meeting the specifications provided by Buyer; (c) ESD sensitive items whose static protection packaging has been opened; (d) items repaired, modified or altered by any party other than Di Vita Engineering; (e) items used in conjunction with equipment not provided by, or acknowledged as compatible by, Di Vita Engineering; (f) subjected to unusual physical, thermal, or electrical stress; (g) damaged due to improper installation, misuse, abuse, or storage; (h) damaged due to accident or negligence in use, storage, transportation or handling.

To the extent the Product is incorporated into any other instrument or device, Di Vita Engineering makes no representation with respect to the safety, efficacy, accuracy, reliability, use, or fitness for intended purpose of such integrated product. To the extent so incorporated into any other instrument or device, Buyer hereby agrees to indemnify and hold Di Vita Engineering harmless from any claims, suits, liabilities, losses, damages, expenses (including reasonable attorneys' and experts' fees and expenses) and costs arising from or relating to any defects in and/or the use



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of such integrated product, and/or the failure of such integrated product to comply with any applicable laws or regulations.

Subject to Buyer's compliance with the procedures set forth in paragraph 6 below, Di Vita Engineering' sole obligation, and Buyer's exclusive remedy for any defective Product, shall be limited, at Di Vita Engineering' option, to either repairing or replacing, free of charge for materials or labor, any Product which is proved not in compliance with the Limited Warranty during the Warranty Period.

EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY SET FORTH ABOVE, DI VITA ENGINEERING MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

5. **Limitation on Liability.** To the extent not prohibited by applicable law:

IN NO CASE SHALL DI VITA ENGINEERING BE LIABLE TO ANYONE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES FOR BREACH OF THIS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR UPON ANY OTHER BASIS OF LIABILITY WHATSOEVER, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY DI VITA ENGINEERING'S OWN NEGLIGENCE OR FAULT. CONSEQUENTLY, DI VITA ENGINEERING SHALL HAVE NO LIABILITY FOR ANY PERSONAL INJURY, PROPERTY DAMAGE OR OTHER LOSS BASED ON THE USE OF THE PRODUCT IN COMBINATION WITH OR INTEGRATED INTO ANY OTHER INSTRUMENT OR DEVICE. HOWEVER, IF DI VITA ENGINEERING IS HELD LIABLE, WHETHER DIRECTLY OR INDIRECTLY, FOR ANY LOSS OR DAMAGE ARISING UNDER THIS LIMITED WARRANTY OR OTHERWISE, REGARDLESS OF CAUSE OR ORIGIN,

DI VITA ENGINEERING' MAXIMUM LIABILITY SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE OF THE PRODUCT WHICH SHALL BE THE COMPLETE AND EXCLUSIVE REMEDY AGAINST DI VITA ENGINEERING.

6. **Product Return/Repair Policy.**

A. Buyer will notify Di Vita Engineering about the occurrence of defective or non-operational Product and request a "Return Authorization Number" (hereinafter referred to as "RAN#") from Di Vita Engineering for the items Buyer would like to return for repair or replacement by email to the attention of the Customer Service Manager. This RAN# is to be used for all correspondence and shipping documents that relate to the Product.

B. Buyer will ship the defective or non-operational Product to Di Vita Engineering. Buyer is responsible for shipping cost.

C. Upon receipt of the returned Product, Di Vita Engineering will test the Product to verify the defective status of the component within the terms of the Limited Warranty and communicate such results to Buyer.

D. Di Vita Engineering will either send a repaired or replacement Product after verifying that the Product returned under the RAN# is in fact defective within the terms of the Limited Warranty. Di Vita Engineering is responsible for shipping costs of replacement Product to the Buyer.

7. **Intellectual Property Rights.** Any intellectual property rights on a worldwide basis, including, without limitation, patentable inventions (whether or not applied for), patents, patent rights, copyrights, work of authorship, moral rights, trademarks, service marks, trade names, trade dress trade secrets and all applications and



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registrations of all of the foregoing resulting from the performance of these Terms and Conditions of Sale that is conceived, developed, discovered or reduced to practice by Di Vita Engineering, shall be the exclusive property of Di Vita Engineering. Specifically, Di Vita Engineering shall exclusively own all rights, title and interest (including, without limitation, all intellectual property rights throughout the world) in and to the Products and any and all inventions, works of authorship, layouts, know-how, ideas or information discovered, developed, made, conceived or reduced to practice, by Di Vita Engineering, in the course of the performance of these Terms and Conditions of Sale.

8. Miscellaneous.

A. Export Control Laws. Buyer shall comply with all applicable laws, regulations and treaties relating to the sale and destination of the Products, including, without limitation, U.S. and European export control regulations. Buyer agrees not to sell any of the Products in any territory or country prohibited by applicable U.S. laws and to obtain representations from its customers that they will not resell or transfer any of the Products to such countries or territories. Buyer will defend, indemnify and hold Di Vita Engineering harmless for any damages or costs to Di Vita Engineering arising from Buyer's failure to comply with these terms.

B. Assignment. These Terms and Conditions of Sale and the rights of Buyer hereunder may not be assigned in whole or in part without the prior written consent of Di Vita Engineering.

C. Invalidity. If any provision of these Terms and Conditions of Sale is held invalid by any governing law or regulation or by any court having valid jurisdiction, such invalidity will not affect the enforceability of other provisions.

D. Governing Law/Entire Agreement. Buyer acknowledges and agrees that these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the jurisdiction from where the products are shipped, without reference to any conflict of law rule. Buyer and Di Vita Engineering expressly agree that any disputes under these Terms and Conditions of Sale shall be resolved exclusively in the courts located within such governing jurisdiction. These Terms and Conditions of Sale constitute the entire agreement between Buyer and Di Vita Engineering with respect to Buyer's purchase of the Products and supersedes all prior agreements and understandings with respect to such purchase and may not be changed or amended, or superseded by conflicting terms and conditions submitted by Buyer.

9. **Government Contracts.** Notwithstanding the foregoing, in the event the Buyer is a federal agency of the United States government that is subject to the requirements of the Federal Acquisition Regulations (the "FAR"), any provision contained herein (e.g. indemnification provisions) that conflict with or violate the FAR or the provisions of applicable federal common law, including without limitation the Prompt Payment Act, the AntiDeficiency Act and the Contract Disputes Act, shall be null and void and the provisions of such applicable federal common law shall control.