

- 1) **Agreement to Sell**, ESI Electronic Products Corp. and its affiliates, subsidiaries and divisions. (collectively referred to with the terms "we", "us" "our" or "ESI") agrees to sell goods and/or provide services to the Buyer (referred to with the terms "you" and "your"), provided that the sale is on the terms and conditions presented herein. In the event you elect to obtain the ESI Information Services, we shall provide such Information Services on the terms set forth in the Subscription Agreement. We hereby grant to you the right to use the data collected by the Information Services during the term of your Subscription Agreement. All rights not specifically granted herein are herein expressly reserved by us. WE WILL ONLY FILL YOUR ORDER ON THE TERMS AND CONDITIONS SET FORTH HEREIN (THIS "AGREEMENT"). FOR THE AVOIDANCE OF DOUBT, WE DO NOT AGREE TO ANY DIFFERENT OR ADDITIONAL TERMS IN YOUR PURCHASE ORDER OR OTHER DOCUMENTS UNLESS WE HAVE SPECIFICALLY ACCEPTED SUCH DIFFERENCES OR ADDITIONAL TERMS IN WRITING. THIS AGREEMENT IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF OUR STANDARD TERMS AS CONTAINED IN THIS AGREEMENT. IF YOU DO NOT EXPRESSLY AND PROMPTLY NOTIFY US IN WRITING THAT YOU DO NOT AGREE TO THESE TERMS, YOU SHALL BE DEEMED TO BE BOUND BY SAID TERMS.
- 2) **Price Increases**. We may increase our prices 5 days after written notice to you, to reflect any increased costs to us in producing the goods. The increased price will become effective and govern this Agreement unless we receive written notice, before the increased price becomes effective, of your cancellation of this Agreement as it applies to any goods to which the increased price would apply. In the event you have a subscription agreement or services contract with a specified term, the price increase shall take effect at the end of the current term (unless you have elected to purchase additional services in which case any price increase shall take effect when the services are activated for the first time). Your subscription agreement may not be canceled prior to the expiration of the current billing period. If the contract is canceled early, termination fees may apply.
- 3) **Taxes**. We may increase the prices in this Agreement without prior notice to cover any taxes (other than taxes on net income) and governmental fees that we may be required to pay or collect with respect to the goods or services sold under this Agreement or with respect to any labor or materials used in their production.
- 4) **Payments**. You must pay for the goods or services within the agreed upon terms after you receive our invoice for them, in cash or in otherwise immediately available United States funds. Invoices not paid within 10 days after the agreed upon terms shall bear interest at 2% per month. We may revoke your credit if you fail to pay timely for goods shipped or services which have been activated, or if we determine, in our sole discretion, that your financial condition has undergone an adverse change. We may require you to pay before we manufacture or ship goods if we elect not to extend credit. Charges for Information Services are billed in advance, your subscription agreement will specify the billing period. Information Services shall not begin until the first billing period is pre-paid in advance and service may be interrupted if subsequent billing periods are not paid in full prior to the commencement date of the next period.
- 5) **Collection Costs**. If you do not pay for the goods or services in full and on time, we may engage lawyers and/or other agents to help us collect amounts owed to us. We may add amounts paid or incurred in collecting sums owed by you (including legal and collection agency fees and expenses) to the amount of the invoice and interest provided in paragraph 4.
- 6) **Shipments**. We will arrange transportation of the goods to you to your designated port or destination from either our manufacturing facility in Prospect, Connecticut or from any other facility at our discretion (our "Plant"). All shipments are FOB the Plant. You will pay on demand all transportation charges incurred in shipping the goods. Risk of loss of the goods passes to you as soon as the goods are deposited with the carrier.
- 7) **Excused Non-Performance**. We are not responsible for failures to make delivery, delays, or any other deviations in our performance directly or indirectly due to causes beyond our reasonable control. Excused non-performance includes but is not limited to: acts of war; public disorders, insurrection, rebellion, sabotage, riots of violent demonstrations, explosions, fires, earthquakes, typhoons, tsunamis or other natural disasters, strikes, lockouts, or other industrial action, accidents; labor or transportation problems; difficulty in obtaining regular sources of fuel, power, materials or supplies at anticipated prices and quality; engineering and technical or design limitations; and the impact on our business of any existing or future legislation or any governmental orders, rules or regulations. Any Information Services provided utilizes the internet to obtain collected data and for your access to such data. As such we cannot be responsible for interruptions in data collection or your access to said data resulting from causes beyond our control including but not limited to interruptions of internet communications or access. There may be times where we are required to temporarily interrupt service for maintenance or other technical reasons. We will attempt to provide advance notification of these events but there may be times when we are unable to do so.
- 8) **Delivery Terms**. We agree to ship only on the following terms:
 - a) **Installments**. We may ship goods in installments and invoice them separately. You will pay for each installment as invoiced without regard to other shipments. Any failure to pay each invoice as and when due will substantially impair the value of this entire Agreement to us and any further shipments may/will be suspended until such time as the unpaid invoices are paid.
 - b) **Hold Orders**. If you order any quantity of goods on "hold" or otherwise order goods subject to our future release, the full quantity will be deemed released for shipment on the 60th day after the date of your order, and you will pay for the goods accordingly.
 - c) **Restocking Charge**. We reserve the right to impose a restocking charge equal to 25% of the invoice price for goods shipped to you and returned to us for any reason other than as provided in paragraph 2.
- 9) **Limited Warranty**. We provide the following limited warranty to the original purchaser:
 - a) **Goods Covered By Service Contract**. The warranty in this paragraph 9 does not apply to any goods for which you have obtained a service contract with us. The service contract provides the sole warranty as to such goods.
 - b) **All Other Goods**. As to all other goods ("Warranted Goods"), provided that they are used in the United States, we warrant that such goods shall not fail to function in accordance with our specifications because of defects in material or workmanship, for the following warranty periods:
 - i) **New Products**: New Products consisting of microprocessor based controllers, displays, and other electronic equipment ("Controllers") for 1 year from date of purchase.
 - ii) **Spare Parts**: Spare parts for the period of 90 days from the date of purchase.
 - iii) **Replacement Units or Parts**: Warranty replacement units or parts for 1 year from the purchase date of the original unit. The warranty covers only the repair or replacement of the defective part or product (at the option of ESI) and is not inclusive of any extra charges, that includes but is not limited to, any labor charges associated with the removal, repair, replacement or reinstallation of the defective part or product. THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY UNDERTAKING IN THIS AGREEMENT DOES NOT APPLY TO ANY GOODS THAT HAVE BEEN SUBJECTED TO ACCIDENT, DISASTER, LOSS OR DAMAGE DURING SHIPMENT, NEGLIGENCE, MISUSE, IMPROPER INSTALLATION, CORROSIVE ATMOSPHERE HARMFUL TO ELECTRONIC CIRCUITRY, EXCESSIVE ELECTROMAGNETIC FIELDS, FAILURE OR INSUFFICIENCY OF ELECTRICAL POWER OR UNUSUAL ELECTRICAL SURGE

OR SHOCK, NOR TO DYSFUNCTION OR MALFUNCTION OF, OR CAUSED BY, ANY OTHER EQUIPMENT OR DEVICE (OTHER THAN EQUIPMENT OR DEVICES YOU HAVE BOUGHT FROM US) TO OR IN WHICH SUCH GOODS HAVE BEEN ATTACHED OR INSTALLED.

- c) Information Services. If you have subscribed to any information services, we make no warranty as to the availability, accuracy, or usefulness of the data collected through the Information Services and your use of the Information Service is at your sole risk. We and our parent, holding, subsidiary and related companies, affiliates, officers, employees, agents, partners, licensors, suppliers and vendors expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement (other than any warranty the exclusion of which is not lawful). We nor our parent, holding, subsidiary and related companies, affiliates, officers, employees, agents, partners, licensors, suppliers and vendors make no warranty that the Information Service will meet your requirements; (ii) the Information Service will be uninterrupted, timely, secure or error-free; (iii) the service will be accessible at any time or at all times via the channel selected or used by you, (iv) the information contained on, distributed through, or linked, downloaded or accessed from or through the Information Service (the "materials") or the results that may be obtained from the use of the service will be accurate or reliable; (v) the quality of any products, services, information or other material purchased or obtained by you through the service (the "products") will meet your expectations; and (vi) any errors in the software will be corrected. Any reliance upon or use of any of the materials shall be at your own discretion and risk. We reserve the right, in our sole discretion and without any obligation, to make improvements to, or correct any error or omissions in, any part of the service or the materials. The materials are provided or made available by us on an "as is" basis, and we expressly disclaim any and all warranties, express or implied, including without limitation warranties of merchantability and fitness for a particular purpose, with respect to any of the materials or Information Service. THE ESI INFORMATION SERVICES ARE PROVIDED ON AN "AS-IS WHERE IS" BASIS AND WE MAKE NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE SERVICES, THE WIRELESS MESSAGING NETWORKS THROUGH WHICH THE SERVICES ARE PROVIDED, ANY INTERNET ACCESS OR DELIVERY OF SUCH INFORMATION PROVIDED HEREUNDER, OR ANY COMPONENT THEREOF, AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATED THERETO, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE INFORMATION SERVICES. e. Not Transferable. This warranty may not be assigned or transferred without our prior written consent.
- 10) Remedies.** Your remedies are exclusively those stated in this paragraph 10 and in paragraph 14. a. Controllers. If Warranted Goods fail to perform as warranted in paragraph 9 and consist of Controllers, such goods will be repaired or replaced as follows: i. You may receive a replacement Controller from our Plant, You will be responsible for returning the failed Controller to our Plant; or ii. You may exchange the failed Controller for a replacement at one of our authorized local service centers. You will be responsible for returning the failed Controller to the service center. In either case, if we determine that the Controller has failed to perform as warranted in paragraph 9, we will supply a replacement unit to you at no cost for the unit. You will be solely responsible for installing and testing the replacement Controller and for the expenses thereof. You remain responsible for all costs associated with minor adjustments or calibrations of Controllers and for any labor costs for the replacement of probes connected with Controllers. b. Other Warranted Goods. If Warranted Goods other than Controllers fail to perform as warranted, we will supply replacements for the Warranted Goods (or any component parts thereof) only on the following conditions: i. You must notify us of the failure, specifying in the notice the unit or component part that has failed and the apparent cause of such failure; ii. You must promptly return the failed unit, or remove and return the failed part, to us, freight prepaid; iii. You will accept a replacement unit or part when we deliver it to you, for installation after our receipt of your notification in accordance with this paragraph 10(b). You will be solely responsible for installing and testing the replacement units or parts and the expenses thereof. Replacement units or parts will be invoiced to you at the then current prices for units or parts sold without warranty or service contracts. After we have received the unit or part you have returned, we will determine whether the unit or part has failed to perform as warranted in paragraph 9. If our determination accords with your claim, we will promptly issue you a credit notation for the invoice price of the shipped and invoiced replacement unit or part. c. Limitation of Liability. The remedies described in this paragraph 10 and in paragraph 14 are exclusive. Under no circumstances do we have any other or further liability or obligation, whether for breach of warranty or for any other claim. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE TO YOU FOR THE COST OF ANY WORK YOU DO ON GOODS WE FURNISH, OR FOR COSTS OR EXPENSES YOU INCUR IN TESTING, INSPECTING OR PROCESSING GOODS, OR FOR LOST PROFITS, INJURY TO GOOD WILL, OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR NONDELIVERED GOODS, SHALL BE RECOVERABLE IN AN AMOUNT EXCEEDING THE LESSER OF \$50,000 OR THE NET INVOICE PRICE YOU PAID FOR THE GOODS IN RESPECT OF WHICH THE CLAIMS WERE MADE, EXCEPT FOR CLAIMS DESCRIBED IN PARAGRAPH 14. We assume no responsibility for any equipment, parts, attachments or devices we have not supplied to you, or for expendable supply items, such as light bulbs, or for our failure to provide service due to any cause beyond our reasonable control. d. Information Services. We disclaim any liability for damages arising from the use or operation of the Information Services. Under no circumstances do we have any other or further liability or obligation, whether for breach of warranty or for any other claim. IN NO EVENT WILL WE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL SPECIAL OR PUNITIVE DAMAGES RELATED TO THE INFORMATION SERVICES OR THE INFORMATION SERVICES BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF, OR SHOULD HAVE KNOWN OF, THE POSSIBILITY OF SUCH DAMAGES AND OUR ENTIRE LIABILITY FOR ANY CLAIM RELATED TO THE INFORMATION SERVICES SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE INFORMATION SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM. e. Time Limits For Claims. You must commence any action for a breach of any of our obligations within 1 year after the breach occurs, regardless of your lack of knowledge of the breach. Any action not commenced within the 1-year period shall be forever barred, notwithstanding any longer statutory period of limitation.
- 11) Cancellation.** Except as provided in paragraph 2, you may not cancel any order or terminate your obligations to accept and pay for goods to be delivered in installments without our prior written consent. If we consent to any cancellation you request (other than under paragraph 2), you shall be liable to us for: a. The full invoice price of goods shipped or ready for shipment at the time of cancellation; b. For specially manufactured goods, an amount equal to 125% of the sum of the direct and indirect costs and expenses we have incurred in respect of your order for goods not ready for shipment at that time, including costs and expenses of engineering, fabrication, assembly, testing, and related aspects of the manufacture and supply for the returned goods; c. For all other goods, a restocking charge equal to 25% of the invoice price. d. The Subscription Agreement may require that you pay for the services for some minimum period of time during which the service may not be canceled and you shall be responsible for the subscription fees regardless of whether you access the data. You may cancel or terminate the service at the end of the contract period by providing us written notice 60 days in advance of the next renewal date. There will be no refunds of any pre-payments or partial refunds if the service is terminated prior to its term or if you stop using the service during an unexpired contract period.
- 12) Inventions and Other Intellectual Property.** All ideas, discoveries, inventions, concepts, improvements, processes, methods, knowhow, and other forms of intellectual property, and all plans, drawings, tools, computer programs and other items or materials that we have made, developed, created, compiled or

fabricated in producing any goods especially for you, are and shall remain our exclusive property at all times. You have no rights therein apart from the right to use or resell the goods you purchase.

- 13) Confidentiality.** If you visit any of our facilities or otherwise are accorded access to any of our proprietary or confidential information, you will hold all such information in strict secrecy and not use or disclose any such information to a third party without our prior written consent. This provision applies to you, your agents and representatives that any of this confidential information is disclosed to. The protections of this paragraph are in addition to our rights under any applicable law or any written agreement executed between us such as a Mutual Confidentiality Agreement and/or Non-Disclosure Agreement.
- 14) Proprietary Rights and Indemnification.** You warrant that goods that we have manufactured in accordance with or based upon your specifications or upon technical data you have furnished to us or any reports created or generated based upon your specifications do not infringe any United States and/or foreign patent, trademark, copyright, known trade secret or any other proprietary rights of persons not a party to this Agreement. You will indemnify us from and hold us harmless against any and all judgments, decrees, orders, claims and liability, and all loss, cost, damage, injury, or expenses incident thereto, resulting from any alleged infringement. If we request, you will defend us at your own expense in any action or proceeding instituted against us in which any such infringement in the manufacture, use or sale of goods or services conforming to your specifications or technical data is asserted. We may, if we desire, be represented by and participate through our own counsel, whose reasonable fees and expenses you agree to pay. If any claim of infringement or the like is made with respect to goods or services we have designed, manufactured or provided entirely in accordance with our own specifications, our obligations shall be exclusively as set forth in Section 2-312(3) and 2-607 of the Uniform Commercial Code as in effect in the State of Connecticut. We will not be obligated on any claim if: i. You have failed to provide us with prompt written notice of any such claim or threatened claim; or ii. Any such claim or threatened claim is based upon an allegation that your purchase, use or resale of goods we have supplied, but which have not been installed and operated in accordance with our specifications and directions, infringes the intellectual property rights of third persons; or iii. Any such claim is attributable to equipment or other devices supplied by anyone but us (even if the equipment or devices were made or adapted for use or resale with goods sold by us); or iv. You do not allow us to control the defense against or other opposition to such claim, including the settlement of such claim and any related proceedings.
- 15) Applicable Law.** This Agreement is to be construed and enforced in accordance with Connecticut law.
- 16) Construction.** This Agreement and any service contract you elect in lieu of the warranty of paragraph 9, are intended as the final expression of the agreement between you and us and constitute the complete and exclusive statement of the terms of the agreement between you and us. No statement or agreements, oral or written, made before or at the signing of this Agreement, may vary or modify the written terms of this understanding. Neither you nor we may claim any amendment, modification or release from any provision of this Agreement unless it is in writing, signed by both of us, and specifically states that it amends this Agreement or a service contract you have elected.