

# 820-3 DYCO ELECTRONICS INC. TERMS AND CONDITIONS

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## TERMS AND CONDITIONS OF SALE

ACCEPTANCE OF THIS QUOTATION MAY BE BY ANY REASONABLE AND CUSTOMARY COMMUNICATION. BUYER'S ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS SET FORTH IN THIS QUOTATION. ADDITIONAL AND DIFFERENT TERMS IN BUYER'S PURCHASE ORDER OR ACCEPTANCE SHALL HAVE NO FORCE OR EFFECT.

1.0 Preamble. These terms and conditions shall govern all orders accepted by Dyco Electronics, Inc. ("Dyco"). No additional or different terms are acceptable. If Buyer's Purchase Order or other notice of acceptance of a Dyco Quotation contains additional or different terms, then such terms shall be deemed objected to and shall have no force or effect, notwithstanding that such notice of acceptance creates a binding Agreement in accordance with these terms and conditions.

2.0 Prices. Unless otherwise stated, Quotations are valid and subject to acceptance by Buyer for a period of thirty (30) days. Typographic and stenographic errors are subject to correction. Price breakdowns are provided for reference only, and Quotations are not subject to incremental purchasing. Prices do not include local, state, or federal taxes or duties. Dyco will add all such taxes to the invoice whenever it has the legal obligations to collect such taxes unless Buyer furnishes an exemption certificate acceptable to the taxing authorities. Buyer agrees to accept and promptly pay any and all additional charges that may be assessed as provided herein, and further agrees that such additional amounts will include Dyco's customary percentage of profit for such charges. Designs, tooling, programs, process routings and all other intermediate items utilized in the production of the primary end product are non-deliverable and remain the property of Dyco, whether itemized in a price breakdown or not, unless specifically stated otherwise. Except in the case of time and material contracts, Dyco reserves the exclusive right to subcontract at its sole discretion without prior or subsequent notification. Schedule slots are reserved upon placement of order. Where warranted by business conditions or other circumstances, cancellation of the order may incur cancellation charges on a take-or-pay basis. The minimum cancellation charge is twenty percent (20%).

3.0 Confidentiality and Data Rights.

3.1 In the absence of an existing written agreement of confidentiality between Dyco and Buyer, each party hereto agrees to maintain in absolute confidence the proprietary information and trade secrets ("**Confidential Information**") of the other party and shall not disclose the Confidential Information to any person or company without the prior written consent of the disclosing party, *provided, however*, that the recipient may disclose portions of the Confidential Information to those of its employees or suppliers who need to know such information for the purposes of performing this Agreement and who agree to be bound by this Agreement to the same extent as if they were parties hereto. The confidentiality obligations of each party under this Agreement shall survive the termination of any business discussions

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or relationship between the parties and shall remain in effect for one (1) year after such termination.

3.2 If this Agreement includes design services as a deliverable, then Dyco grants to Buyer a non-exclusive, nontransferable, royalty free license to use all developments, including information, designs, inventions, reports and drawings furnished to Buyer and first made by Dyco under this Agreement.

3.3 If this Agreement includes software development as a deliverable, then Dyco grants to Buyer a non-exclusive, nontransferable, royalty free license to use the software furnished to Buyer and first made by Dyco under this Agreement.

3.4 If Dyco has designed and/or manufactured to the specifications of Buyer, then Buyer shall indemnify Dyco and hold it harmless from and against any and all claims, damages, judgments, losses and expenses (including legal fees) based upon or arising from allegations of infringement upon trademarks, copyrights, patents and/or trade secrets.

3.5 Except as otherwise expressly provided, no license or other right is hereby transferred to Buyer, including any license by implication, estoppel or otherwise, under any patent, patent application, trade secret, trademark or copyright.

4.0 Delivery. Delivery of all products shall be EXW Dyco's facility, in the case of items being shipped by Dyco, and in the case of items being shipped directly by Dyco's subcontractors, EXW such subcontractor's facility. Delivery does not include export boxing and shipping which shall be charged extra to the account of Buyer. Times for delivery are estimates only. Dyco shall not be liable for any damages arising out of any delay in delivery for any reason. Deliveries are determined from the date of acceptance of a written order and receipt by Dyco of all specifications, drawings, components and other materials to be furnished by Buyer (where applicable), whichever is the latter. Unless otherwise instructed, Dyco will ship items in the best way it deems possible, without any liability whatsoever. Buyer agrees to accept either overage or shortage not in excess of five percent (5%) to be charged for pro-rata.

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5.0 Passage of Title; Risk of Loss. Title shall not pass to Buyer until Dyco has received full payment for the products. Risk of loss shall pass to Buyer as soon as the products are delivered in accordance with Section 4.0, above, or the provisions of Section 11.0, below, are implemented. If Buyer is unable to accept the products in accordance with the shipment schedules, then Dyco will store the finished products. All costs related to storage (including insurance) shall be borne by Buyer. Invoices for the products will be issued when the products are placed in storage or when they are delivered, whichever is first. On F.O.B. destination shipments, Buyer shall immediately notify Dyco of any shipping damages and note all such damages on the shipping documents prior to accepting the products. Failure to comply with this requirement will absolve Dyco from any damage claims.

6.0 Terms of Payment. Unless otherwise specified by Dyco in its Quotation, the terms of payment are net thirty (30) days. Invoices that are unpaid after thirty (30) days will be subject to a late charge of one percent (1.0%) per month (12% per year) on unpaid balances commencing from the date of the invoice and continuing until paid.

7.0 Buyer Supplied Parts, Components, Etc. Where Buyer supplies parts, components, etc., all items must conform to applicable requirements, specifications, print tolerances and/or industry standards with regard to packaging, dimensional integrity, cleanliness, etc. Buyer is responsible to furnish correct quantities of components, including a minimum of five percent (5%) in excess if the quantity required to fill the order (or such other amounts as designated by Dyco). Dyco reserves the right, subject to timely notification of Buyer, to make additional charges whenever shortages or non-conforming Buyer supplied items directly or indirectly delay, alter or otherwise add to the intended manufacturing process. All consigned items are to be shipped freight prepaid, additional charges will apply for shipping charges plus fifteen percent (15%) for items received freight collect. Whenever items of particularly high value are consigned to Dyco, Buyer shall notify Dyco in writing that the items are particularly valuable. Dyco will exercise due care in handling and accounting for items where it has been so notified, however, Dyco shall incur no liability whatsoever for lost or damaged materials.

### 8.0 LIMITED WARRANTY.

8.1 MATERIALS AND WORKMANSHIP. Dyco warrants the products delivered as free from any defects resulting from faulty workmanship for a period of one year from date of delivery.

8.2 THE WARRANTIES SET OUT IN SECTION 8.1, ABOVE, ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

DYCO MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, OR RESPECTING INFRINGEMENT. However, Dyco will transfer to Buyer whatever transferable warranties and indemnities Dyco received from the manufacturer of the parts and materials,

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other than parts and materials supplied by Buyer.

8.4 Buyer is deemed to have accepted the products unless written notice of rejection is given within a reasonable time, which is agreed to be within seven (7) days after receipt of the products. Buyer waives any right to revoke acceptance thereafter.

### 9.0 LIMITATION OF REMEDIES.

9.1 With respect to value-added work by Dyco which is determined not to meet applicable Buyer's specifications, Dyco's liability is limited (at Dyco's election) to (1) refund of Buyer's purchase price for such products (without interest), (2) repair of products, or (3) replacement of such products, provided, however, that such Products must be returned to Dyco, along with acceptable evidence of purchase, within one hundred twenty (120) days from date of delivery.

9.2 If claims for infringements not covered under Section 3.4, above, would prevent Buyer from normal use of the products, then Buyer shall promptly notify Dyco and Dyco shall have sole control over the defense of such claims. If the claims are sustained, then the exclusive remedy shall be that Dyco, at its option, will either modify the products in such a manner as to render them noninfringing, secure for Buyer the right to continue to use the products, or accept return of the products and refund the purchase price paid.

9.3 DYCO SHALL NOT BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY DEFECT IN THE PRODUCTS, OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF DATA USE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION, LOSS OF BUSINESS OPPORTUNITIES OR LOSS OF CUSTOMERS RESULTING FROM ANY DEFECT IN THE PRODUCTS. IN NO EVENT SHALL DYCO'S LIABILITY EXCEED THE AMOUNT ACTUALLY RECEIVED FROM BUYER, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE.

9.4 Buyer shall bear the cost and risk of transport of defective parts and of repaired parts between Buyer's plant and Dyco's plant.

9.5 Buyer shall have no claim against Dyco for indemnification or contribution resulting from any defect in the

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products. Buyer shall indemnify Dyco and hold it harmless from and against any and all claims, damages, judgments, losses and expenses (including legal fees) based upon or arising from the use of equipment and/or materials purchased hereunder or from the use of any products made from or by said equipment or materials.

10.0 Force Majeure; Relief. Dyco shall be relieved of performance in the event that its performance is substantially impeded by events outside its control, including, but not limited to, industrial disputes, strikes, boycotts, work stoppages or slowdowns resulting from job actions of any nature, power failures, shortage or inability to obtain raw or other materials, fire, mobilization, requisition, government allocation of raw materials, embargo, currency restrictions, insurrection, shortage of transportation, governmental restrictions in the use of energy, war (declared or undeclared), flood, riots, revocation in whole or in part, or amendment of import and/or export licenses or permits or any other governmental acts, rules, laws or restrictions, whenever such circumstances are beyond the control of Dyco. If Dyco is unable to obtain raw or other materials at market prices reasonably close to those prevailing on the date of this Agreement, then Buyer shall promptly pay additional charges to the extent of the variation in market prices.

11.0 Delays. If there is any suspension or unreasonable delay, not caused by Dyco, which prevents completion of Dyco's work, or if Buyer defaults, or in the event of declared, involuntary or apparently imminent bankruptcy or insolvency on the part of Buyer, then Dyco shall have the right to estimate the value of all work performed and of all material furnished and of all material fabricated, in whole or in part, together with any reasonable cancellation charges as provided herein, and Buyer shall promptly pay in full the amount of the estimate to Dyco immediately upon invoice.

12.0 Disputes. All claims, disputes and other matters in question between Dyco and Buyer arising out of or relating to this Agreement or breach thereof shall be decided by arbitration in Rochester, New York administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules. The Arbitrator shall have no authority to vary the terms of this Agreement or to award punitive or other damages not measured by the prevailing party's actual damages. The Arbitrator's Award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

13.0 Severability. If any of the provisions of this Agreement are determined to be invalid under applicable law, they are to that extent deemed omitted. The invalidity of any portion of this Agreement shall not render any other portion invalid.

14.0 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of New York State, without giving effect to the provisions, policies or principles thereof respecting conflict or choice of laws.

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15.0 Non-Waiver. No delay or failure by either party to exercise any right hereunder, and no partial or single exercise of such right, shall constitute a waiver of that or any other right unless otherwise expressly provided herein.

16.0 Entire Agreement; Amendment. Upon Buyer's acceptance of this Quotation, these Terms and Conditions, together with applicable Quotations and technical appendices attached hereto, shall contain the entire understanding between the parties respecting the subject matter thereof, superseding all prior agreements, understandings and arrangements. This Agreement may be amended only by a written instrument signed by the party against whom enforcement is sought.

17.0 Use of Products in Life Support Applications. Products sold by Dyco are not designed for use in life support equipment where malfunction of such product can reasonably be expected to result in personal injury. Dyco's customers using or selling such products for use in life support equipment do so at their own risk and agree to fully indemnify Dyco and the manufacturer of such products and hold them harmless from and against any and all claims, damages, judgments, losses and expenses (including experts' fees and reasonable legal fees) based upon or arising from such use or sale.

18.0 Returns. No return of products will be accepted by Dyco without a Return Material Authorization Number, which may be issued in Dyco's sole discretion. Returned products must be in original shipping cartons and must include all packing materials. A complete description regarding the nature of the defect must be included with all returned products. All items not eligible for credit will be returned to Buyer, transportation collect.

19.0 No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

20.0 EEOC. Buyer certifies that it complies with the equal opportunity, affirmative action and employee notice requirements specified in the Equal Opportunity Clauses at 41 CFR 60-1.4, 41 CFR 60-250.5(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and the Employee Notice Clause at 29 CFR 471, Appendix A to Subpart A, where applicable.