



Terms & Conditions

A. PRICES

- i. All prices are subject to adjustment as a result of specifications, quantities, shipment arrangements or other terms and conditions that are not part of the original price quotation.
- ii. Prices are exclusive of all federal, state, municipal or other government excise, sales, use, occupational or like taxes, tariffs, customs, duties and importing fees. Prices are, from time to time, subject to increase by the amount of any such tax, tariff, duty or fee which Fresh Digit pays or is required to pay or collect upon sale or delivery of the products.
Any certificate of exemption or similar document or proceeding required to exempt the sale of products from sales or use tax liability shall be obtained by Customer, at Customer's own expense.

B. PAYMENT TERMS

Standard payment terms are T/T in advance, except where satisfactory account credit is established, in which case terms of payment are net thirty (30) days from the date of invoice. Fresh Digit reserves the right at any time to revoke any credit extended to the Customer for any risk deemed good and sufficient by Fresh Digit. Fresh Digit will issue invoices on delivery of all products; and if partial shipment is authorized and agreed upon, each shipment shall be invoiced and paid when due without regard to other scheduled deliveries.

Overdue payments shall be subject to finance charges computed at a periodic rate to the extent permitted by law) of 1.25% per month (15% per year). Amounts owed by the Customer with respect to which there is no dispute shall be paid without set-off for any amounts which the Customer may claim are owed by Fresh Digit and regardless of any other controversies which may exist.

C. DELIVERY

- i. All products will be shipped FOB origin or as otherwise designated by Fresh Digit or agreed upon between Fresh Digit and the Customer.
- ii. Ownership of, and risk of loss or damage with respect to, the products shall pass to Customer upon delivery thereof by Fresh Digit to Customer or to a carrier for shipment to Customer, whichever occurs earlier. Customer hereby grants to Fresh Digit a security interest in the products as security for the performance by Customer of all its obligations hereunder.
- iii. Fresh Digit reserves the right to make shipments when product is available and shall invoice as shipment is made.
- iv. All products will be scheduled for shipment in accordance with Fresh Digit' minimum order policy and applicable shipment sequence. Fresh Digit will confirm in writing, and amend as

appropriate, the shipment schedule. Under no circumstances shall Fresh Digit be liable to Customer for any delay either in shipment or in delivery.

v. If Customer's order exceeds Fresh Digit stock and backorder is allowed, by purchasing over Fresh Digit stock, Customer agrees to a minimum three (3) week lead time for all items. Fresh Digit will advise customer on actual lead time, and will permit Customer a three (3) day grace period to cancel their order without consequence.

D. SHIPMENT

Unless specific instructions are provided by the Customer, Fresh Digit will select the carrier at its sole discretion and ship the products to the Customer's address indicated on Customer's purchase order.

E. OFFER AND ACCEPTANCE

Fresh Digit offers to sell and deliver the products and services specified herein in accordance with the terms and conditions hereof. This offer expressly limits acceptance to the terms hereof and any additional or different terms proposed by the Customer are hereby objected to and rejected unless expressly assented to in writing by Fresh Digit.

F. CANCELLATION, RESCHEDULING, RETURNS, AND MODIFICATIONS

i. Any request for order cancellation, rescheduling, or return must be made in writing within fifteen (15) days from the order's shipment date. This fifteen (15) day period includes the day of shipment. Fresh Digit will notify customer of order shipment on that date.

ii. Customer shall only return products that are unopened or unused, and all returns are subject to a fifteen percent (15%) restocking fee or higher, depending on item condition. All custom-built products are non-cancellable and non-refundable. Fresh Digit, at its option, may accept or reject any request by Customer to return product for credit. Returns must be approved in writing by an authorized agent of Fresh Digit at its principal office in California by the issuance of a Return Material Authorization (RMA) number. Products returned to Fresh Digit for any reason must be prepaid and shipped to Fresh Digit at Customer's expense. For all authorized returns, Fresh Digit will refund up to eighty-five percent (85%) of the original price of the product, excluding freight, and one hundred percent (100%) of sales tax, if applicable.

iii. Customer shall not return any products for any reason without the prior authorization of Fresh Digit and issuance of a Return Material Authorization (RMA) number. The RMA number should be included on the package and on all shipping documents upon return. Products returned without an RMA number, returned damaged, or otherwise unsalable shall be subject to rejection at the time of delivery or extra charges.

G. WARRANTY

Fresh Digit warrants that each product shall be free of defects in materials and workmanship and conform to specifications set forth in published data sheets for a period of one (1) year from the

date of purchase. The date of purchase is the date the product is shipped by Fresh Digit. Fresh Digit' sole liability and responsibility under this warranty is to repair or replace any product which is returned to it by Customer and which Fresh Digit determines does not conform to the warranty. Product returned to Fresh Digit for warranty service will be shipped to Fresh Digit at Customer's expense and will be returned to Customer freight prepaid by Fresh Digit. In no event shall Fresh Digit be held responsible under its warranty for any defect, which is caused, by negligence, misuse or mistreatment of a product or for any unit which has been altered or modified in any way. The warranty of replacement products shall terminate with the original warranty of the product.

H. WARRANTY DISCLAIMER

Fresh Digit' warranty to Customer constitutes the sole liability and the Customer's sole remedy with respect to the products and is in lieu of all other warranties, liabilities and remedies. Except otherwise stated, Fresh Digit disclaims all warranties, express or implied, including any warranty of merchantability, fitness for a particular purpose or noninfringement.

I. INDEMNIFICATION

Unless otherwise expressly provided in a writing signed by both parties, Fresh Digit does not indemnify, nor does it hold Customer harmless, against any liabilities, losses, damages or expenses, including attorney's fees, relating to any claims whatsoever, including but not limited to, claims for personal injuries, death or property damage related to the products sold hereunder.

J. ASSIGNMENT

This Contract is not assignable by Customer and any attempt to assign any rights, duties or obligations arising hereunder shall be void, null and invalid.

K. FORCE MAJEURE

Fresh Digit shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is caused by reasons or events beyond the control of Fresh Digit, including, but not limited to, acts of nature, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labor difficulties, delays in transportation, delays in delivery or defaults by Fresh Digit' vendors, or acts or omissions of the Customer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and the Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of ninety (90) days, Fresh Digit or the Customer shall have the right by written notice to the other to cancel the order for the products subject to the delayed delivery without further liability of any kind.

L.

If Customer's order is placed for a contract with the United States Government, Fresh Digit agrees to comply with such contract provisions and regulations with which it must comply pursuant with law and of which the Customer has given notice to Fresh Digit at time of placing order. In no event will the US Government Cost Accounting Standards apply. All rights in technical data and software owned or licensed by Fresh Digit are hereby reserved and deemed restricted or limited. No provision of Customer's contract with the government will be binding on Fresh Digit except as expressly set forth in the paragraph.

M. LIMITATIONS OF LIABILITY

In no event shall Fresh Digit be liable for special, incidental or consequential damages due to any cause whatsoever. No suit or action shall be brought against Fresh Digit more than twelve (12) months after the related cause of action has accrued. In no event shall the accrued total liability of Fresh Digit from any lawsuit, claim, or warranty exceed the aggregate sum paid to Fresh Digit by Customer under the order that gives rise to such lawsuit, claim, or warranty.

N. GOVERNING LAW

This Contract is made in, governed by and shall be construed in accordance with the laws of the State of California without resort to the States' conflict of laws statutes. If the products purchased hereunder are purchased by a Customer residing in a country other than the United States, the parties then agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from this Contract.

O. DOMESTIC SALES AND EXPORT

Customer certifies that the products purchased hereunder are for use in the United States, and that it will not export or re-export the products unless a) it have obtained approval in writing from Fresh Digit and b) it complies fully with all laws and regulations of the United States relating to such export or re-export, including but not limited to applicable U.S. Export Administration rules and regulations.

P. ENTIRE AGREEMENT AND AMENDMENTS

The terms and conditions herein, constitute the entire Contract between the parties and supersede all previous communications, whether oral or written. Any change to this Contract may be made only upon mutual agreement of the parties in writing.

Q. USE IN LIFE SUPPORT APPLICATIONS

Products of Fresh Digit are not designed to use in life support and/or safety equipment and/or system where malfunction of the product may reasonably expected to result in personal injury or death. Customer uses or sells our products for use in life support and safety applications at Customer's own risk and agrees to defend, indemnify and hold harmless Fresh Digit from any and all damages, claims, suits or expense resulting from such uses.