

**DATAKEY ELECTRONICS, INC.**  
**TERMS AND CONDITIONS OF SALE**

**Last revised 07/2006**

These Terms and Conditions of Sale, any software license applicable to software included in or with the Products (as defined in Section 3), and the coversheet, whether a quotation, an order acknowledgement or invoice, ("Coversheet") accompanying these terms are between Datakey Electronics, Inc.'s ("DKE") and the customer specified in the Coversheet ("Buyer").

**1. SUBMISSION OF ORDER.** In order to be valid, Buyer shall submit all orders for Products in writing, and any purchase order submitted by Buyer for Products must refer to the definitive DKE part number(s) (not just the Product name). DKE may at its discretion accept, reject or allocate Products to any order placed by Buyer and shall not be liable to Buyer, any of Buyer's customers or any other person for refusal or inability to accept or fill any purchase orders. DKE has a minimum order amount of five hundred United States dollars (U.S. \$500). DKE reserves the right to refer orders less than this minimum amount to an authorized DKE distributor for fulfillment. DKE may also indicate from time to time, the minimum quantity of Products it requires to be ordered in any individual purchase order before it is willing to accept such order. A Product order cannot be canceled or modified within ninety (90) days of a scheduled shipment date, or after the Products become work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by DKE due to such cancellation or modification.

**2. TERMS.** These Terms and Conditions of Sale, any software license applicable to software included in or with the Products, the identity and quantity of Products, price for the same and the shipping instructions contained on any purchase order for Products submitted by Buyer and accepted by DKE, and any relevant information on the Coversheet are, together, the "Terms" governing the sale of the Products to Buyer. Notwithstanding the foregoing, software included in or with the Products is licensed not sold to Buyer. All references to "sale" or "sell" herein shall mean "license" for software. Notwithstanding anything to the contrary herein, the applicable software license shall govern the rights and obligations for use of the software included in or with the Products. For Product orders accepted by DKE, Buyer accepts the Terms as governing the sale of such Products to Buyer by: (a) delivering a purchase order or other formal written acknowledgement for Products; (b) accepting delivery of the Products ordered by Buyer; (c) paying the applicable price for the Products ordered by Buyer; or (d) any other statement, act or course of conduct of Buyer which constitutes acceptance under applicable law, whichever comes first. Any counteroffer or proposed addition to or supplement of or material variation to the material terms and conditions of the Terms are hereby expressly objected to and rejected. If the Terms are responsive to a prior offer by Buyer, then the Terms shall be deemed an acceptance of such offer limited to the material terms and conditions stated in the Terms, and any additional or supplemental terms or any material variance from the terms and conditions of the Terms are expressly objected to and rejected. Any non-material variance from the terms and conditions hereof by the Buyer shall not operate as a rejection of the Terms. DKE may only alter the Terms in a written document signed by an authorized DKE manager.

**3. PRODUCTS.** The Products subject to the Terms shall be those DKE products identified by Buyer in its purchase orders and accepted by DKE ("Products"). Buyer agrees to buy such Products, and DKE agrees to sell such Products to Buyer under and subject to the Terms. DKE may substitute reasonably equivalent materials, components or units for any one or more of the Products. The only specifications which are a part of the agreement between Buyer and DKE regarding the Products shall be the most current written specifications, if any, developed and distributed by DKE regarding the Products or otherwise located on DKE's website at [www.datakey.com](http://www.datakey.com), as amended from time to time. All other material describing the Products are intended only to provide Buyer with a general idea about the Products and may not be relied upon as a "basis of the bargain" as part of the Terms. Shipment of Products may be scheduled over time under blanket purchase orders. DKE does not accept orders for delivery more than twelve months from order date except as specified in the Coversheet.

**4. PRICING.** Unless otherwise specified by DKE and subject to the Terms, prices for Products set forth in any Coversheet executed by DKE that comprises a quotation are firm for a period of 30 days from the Coversheet date and shall be the price for Products actually scheduled for shipment in a purchase order placed during such period. Thereafter, prices are subject to **CHANGE**. Typographic or other errors in stated prices are subject to correction. Prices exclude any excise, sales, use or like taxes, and prices are subject to increase in the amount of any such tax (excluding tax on net income) that DKE may be required to collect or pay upon the sale or delivery of the Products. Prices also exclude all dues for import and export licenses and permits, custom charges and duties, penalties, freight, insurance and other shipping expenses and other governmental charges relating to the Products, whenever the same may come due. Buyer shall pay, or reimburse DKE for, all such amounts. All prices are quoted and due in U.S. dollars. Quantity price is based on each individual order's quantity. Sequential orders do not aggregate to achieve higher discount.

**5. TERMS OF PAYMENT.** (a) Credit Terms. Buyer will furnish acceptable credit standing information and references within 30 days of DKE's request. DKE may withhold shipment until such information is supplied. DKE, at its option, may require prepayment, credit card payment, or C.O.D. payment. If Buyer requests a shipment which, when added to Buyer's balance outstanding, would exceed the line of credit, DKE at its option, may require prepayment of the amount in excess of

the credit line. Buyer's credit limit may be adjusted or revoked at any time at the discretion of DKE. (b) Alteration of Payment Terms. DKE may accelerate and demand immediate payment of any amounts owed DKE, cancel delivery or suspend performance if DKE reasonably determines that Buyer cannot pay amounts due hereunder when they become due or if Buyer fails to make any payment when due. (c) Payment Terms. Buyer shall pay DKE for the Products and any additional charges without setoff or counterclaim within 30 days from the date of invoice, unless otherwise specified in the Coversheet. Each shipment shall be considered a separate and independent transaction for which payment is due and shall be paid accordingly. Buyer shall make all payments as provided herein without regard to whether Buyer has made or may make any inspection of any Product delivered hereunder. (d) Late Payment Fee. Past due amounts bear interest computed daily at a rate equal to the lesser of one and one half percent (1½%) per month or the highest rate permissible under applicable usury law. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorney's fees and expenses. (e) Security for Payment of Purchase Price. Buyer grants to DKE a security interest in the Products and proceeds thereof to secure payment of the purchase price of the Products and Buyer's related and incidental obligations to DKE. Buyer shall execute suitable financing statements for filing or such other documents as may be necessary or desirable for perfecting such security interest, and acknowledges that this document constitutes a proper security agreement to be used in connection with any such financing statement. DKE is authorized to file one or more financing statements relating to all or any part of the Products without the signature of Buyer where permitted by law. A photocopy or other reproduction of the Terms or any financing statement covering the Products or any part thereof shall be sufficient as a financing statement where permitted by law.

6. **DELIVERY, SHIPMENT.** DKE shall use commercially reasonable efforts to ship the Products in accordance with any agreed upon shipment date(s). However, DKE does not guarantee compliance with any such date(s) and Buyer agrees that DKE shall not be liable for any damages as a result of any delay in shipment for any reason. If no delivery schedule is stated in the order, DKE shall assign the earliest releases for Product which are reasonable for DKE production to achieve. Shipment of Products in the U.S. shall be F.O.B. DKE facility in Savage, MN, shipment of Products internationally shall be F.C.A. DKE facility, Savage, MN, U.S.A. (Incoterms 2000). DKE may tender Products in partial shipments. DKE will prepare the Products for shipment in accordance with reasonable and standard commercial practices. An itemized packing sheet will accompany each shipment. Title to and risk of loss of the Products shall pass to Buyer upon delivery by DKE to a common carrier.

7. **INSPECTION AND ACCEPTANCE.** Buyer shall promptly and thoroughly inspect all Products immediately after arrival. DKE must receive notice in writing prior to Buyer's resale of Products, but in no event more than 14 calendar days following receipt of shipment, of any packing shortages or of any other failure of the products to conform to the orders placed by Buyer, subject to the Terms. Failure to notify DKE of any such nonconformance within such time frame shall be deemed an irrevocable acceptance of such shipment.

8. **LIMITED WARRANTY AND REMEDIES.** (a) Limited Warranty. Subject to subsections (b), (c), (d) and (e) and Section 12 and any exceptions listed on the Coversheet, DKE warrants to Buyer (and not to any other person) that (i) the Products manufactured by DKE will be free from defective materials and workmanship on the date of shipment; and (ii) all Products will meet the written specification, if any, developed and distributed by DKE regarding the Products in effect as of, and on, the date of shipment of such Products. (b) LIMITATION OF WARRANTY. THE WARRANTIES SET FORTH IN SUBPARAGRAPH (a) ABOVE SHALL NOT APPLY TO ANY PRODUCT WHICH HAS BEEN USED FOR MORE THAN ITS SPECIFIED CYCLE LIFE, ABUSED, ALTERED, MODIFIED, USED IN A MANNER NOT ORIGINALLY INTENDED OR SPECIFIED FOR USE BY DKE EITHER EXPRESSLY OR AS SPECIFIED IN DKE'S WEBSITE FROM TIME TO TIME, OR INSTALLED OR STORED IN A MANNER CONTRARY TO DKE'S WRITTEN INSTRUCTIONS. (c) Procedure. Any claims for breach of the foregoing warranties shall only be valid if Buyer makes such claim within one year of the date of shipment of the Product to which the claim relates and within 10 days of discovery of the defect or nonconformity ("Warranty Period"), by notifying DKE in writing within the Warranty Period detailing the alleged nonconformance or defect to which the claim relates and obtaining a return material authorization number ("RMA") for the return of the Products (which is to be referenced on all return shipping documents). Buyer shall identify such defect in such manner, and provide such documentation with respect thereto, as DKE reasonably may require. (d) LIMITED REMEDY. DKE's sole liability, and Buyer's SOLE REMEDY, for any breach of the foregoing warranties shall be for DKE, at its option, to repair or replace the Product or to issue credit for the purchase price of the Product. In order to receive the warranty service, Buyer must return the defective or nonconforming Product within 30 days of receiving the RMA notification from Buyer hereunder. If DKE determines that the original Product was not defective, Buyer shall reimburse DKE all costs of handling, transportation and repair or replacement at DKE's prevailing rates. All Products returned under this warranty which are repaired or for which a refund is given to Buyer shall become DKE's property. Any repaired or replaced Products shall be warranted as set forth herein, provided that the period within which Buyer may make further claims shall be limited to the remainder of the original period for the applicable Product (the Warranty Period shall be suspended during any period of repair or replacement). (e) Alteration of Limited Warranty. DKE reserves the right to change, amend, alter or modify these warranties in writing from time to time in its sole discretion. Any such changes, amendments, alterations or modifications shall be binding upon Buyer effective upon the delivery of new terms to Buyer containing such changes etc.

9. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8, DKE HEREBY

DISCLAIMS, AND BUYER HEREBY EXPRESSLY WAIVES, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER AND ANY WARRANTIES THAT PRODUCTS WILL FUNCTION LIKE SAMPLES. DKE OFFERS NO INDEMNIFICATION FOR INFRINGEMENT BY THE PRODUCTS. No agent, employee or representative of DKE has any authority to bind DKE to any affirmation, representation or warranty except as stated in the Terms.

10. **RETURN OF PRODUCTS.** The terms in this Section 10 shall not apply to Products eligible for return under Section 8. Buyer shall not return any Products without specific written authorization from an authorized employee of DKE. Upon authorization of the return, DKE shall issue Buyer an RMA number. In no event will Buyer return any Product without the RMA number, which must be clearly marked on the outside surface of the shipping container and all accompanying paperwork. All Products returned from outside of U.S.A. shall be subject to the rules of re-importation into U.S.A. Buyer must provide all necessary import/export documentation for the returned Products. Buyer shall pay all freight costs incurred in returning the Product to DKE's facility and a handling charge equal to twenty percent (20%) of the invoice price of the returned Product. Only Products which are standard catalog Products of DKE will be subject for return, and all such returned Product must be received by DKE in salable condition. All risk of loss and damage during shipment for any Product being returned shall be that of Buyer. In no event shall Products be authorized for return if (a) they have been in Buyer's possession for more than 30 days or (b) the order has been placed with NCNR (non-cancelable non-returnable) terms.

11. **BUYER'S INDEMNIFICATION.** Buyer shall indemnify and hold DKE harmless from and against any and all liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) actually incurred by DKE resulting from (a) a third party claim that any Product used, manufactured, offered for sale or sold, or imported by DKE in accordance with Buyer's design, specification or instruction infringes or misappropriates such third party's patent, copyright, trademark, trade secret or other proprietary rights; (b) Buyer's negligence or willful misconduct; (c) Buyer's use of the Products except as designated or approved by DKE.

12. **LIMITATION OF LIABILITY.** DKE SHALL HAVE NO LIABILITY TO BUYER OR ANY PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, TREBLE OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY, THE TERMS OR ANY OTHER CONTRACT, NEGLIGENCE OR OTHER TORT OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO REPROCUREMENT DAMAGES, LOSS OF PROFITS, LOSS OF USE OR COST OF LABOR, IRRESPECTIVE OF WHETHER DKE HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL DKE'S LIABILITY TO BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCTS UPON WHICH ANY SUCH ALLEGED LIABILITY IS PREDICATED. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITY SET FORTH IN THE TERMS ARE AGREED ALLOCATIONS OF RISK AND ARE INDEPENDENT OF ANY EXCLUSIVE OR LIMITED REMEDIES, AND SHALL SURVIVE AND APPLY EVEN IF SUCH REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

13. **TECHNICAL DATA.** Unless otherwise specifically agreed to in writing by Buyer and DKE, any and all drawings, tooling, equipment, procedures, data, engineering changes, specifications, and documentation made, acquired or supplied by DKE in connection with any Products sold hereunder shall be and remain the exclusive property of DKE, and DKE owns all intellectual property rights in the Products.

14. **FORCE MAJEURE.** DKE shall not be liable to Buyer or any other person for any delay or failure of delivery or of any other performance caused in whole or in part by any contingency beyond DKE's reasonable control, including, without limitation, fire, floods, acts of God, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources. In the event of Product shortages for any reason whatsoever, DKE may allocate production among its customers.

15. **DEFAULT.** In the event Buyer (a) files for relief under the Bankruptcy Act; (b) is adjudicated bankrupt; (c) makes an assignment for the benefit of creditors; (d) defaults in payment of any sum due DKE; or (e) if an involuntary petition is filed against Buyer and is not dismissed within 30 days, DKE may, in addition to any and all other remedies provided by law, (i) suspend in transit any shipment (whether or not pursuant to the Terms); (ii) decline to make further shipments; (iii) postpone any further performance under the Terms or any other agreement with Buyer until such default is corrected to DKE's satisfaction; (iv) immediately cancel the Terms and Products ordered hereunder; (v) declare all amounts owed by Buyer under this or any other agreement to be due and payable immediately; and/or (vi) exercise all rights of a secured party. 10 days advance notice of any intended disposition of repossessed Products shall be deemed reasonable. Sections 2, 4, 5, 9, 12, 13, 15, 16, and 18 shall survive any cancellation of the Terms. DKE's failure to deliver, or nonconformity of, any installment of the Terms shall not be a breach of the whole of the Terms.

16. **ARBITRATION.** If any dispute arises with regard to Buyer's failure to pay hereunder, DKE may seek any available remedy at law or in equity from a court of competent jurisdiction. Except as provided in the preceding sentence, any dispute, claim or controversy which shall arise out of or in relation to the Terms, or the breach thereof, shall be settled by final and binding arbitration under the then-applicable Commercial Arbitration Rules or, if Buyer's principal place of business is outside U.S.A., the International Arbitration Rules of the American Arbitration Association. Any such arbitration shall be

conducted by one arbitrator appointed in accordance with the applicable Rules. Arbitration(s) shall be conducted in Minneapolis, Minnesota, U.S.A. in the English language. An arbitral award may be enforced in any court of competent jurisdiction. Notwithstanding any contrary provisions in the Rules, each party shall bear its own costs and expenses of the arbitration and one-half (1/2) of the fees and costs for the arbitrator(s) unless the arbitrator(s) determine the fees and costs should be borne by one of the parties. The arbitrator(s) may not award or assess punitive damages against either party.

17. **EU WEEE/ROHS COMPLIANCE.** Should a statement of compliance to EU ROHS legislation be required by Buyer, DKE will furnish such statement on an IPC 1752 form to the Yes/No level of detail with the simplified compliance language. Acceptance of these Terms constitutes the Buyer's acceptance of the adequacy of this level of ROHS compliance certification. Buyer acknowledges that the Products are not being sold to an end-user (per the WEEE definition) or into the EU (per the WEEE definition), that the Products are components to be integrated into Buyer's products, and that therefore DKE is not subject to compliance with EU WEEE registration or return requirements.

18. **GENERAL PROVISIONS.** The Terms and any non-disclosure agreement entered into by the parties, constitute the final, complete, exclusive and entire agreement between the parties and supercede all prior or contemporaneous agreements, written or oral, regarding the subject matter of the Terms. The Terms shall be governed by and interpreted under the laws of the State of Minnesota, U.S.A., excluding (a) its choice of law rules; and (b) the United Nations Convention on Contracts for the International Sale of Goods. Buyer shall not have the right to assign or otherwise transfer its rights or obligations under the Terms except with the prior written consent of DKE, which consent shall not be unreasonably withheld. The Terms shall be binding on the parties hereto and their respective successors and permitted assigns. Any prohibited assignment shall be null and void. If any provision of the Terms is found unenforceable, such provision shall be deemed stricken from the Terms, without invalidating any of the other provisions of the Terms. No failure by either party to take any action or assert any right hereunder shall be deemed to be a waiver of such right. The parties are independent contractors and not agents of each other. The Terms shall not be modified except in a writing signed by DKE and Buyer. If a copy of the Terms is translated into another language, the official and binding version shall be the English language version, which shall prevail in all instances. Notices shall be deemed given on the third day following domestic mailing or the seventh day following international mailing, if mailed registered or certified mail, postage prepaid, return receipt requested, or on receipt if delivered by private courier service, or by facsimile, addressed to the respective addresses of the parties on the Coversheet.