

Terms and Conditions of Sale

Sole agreement and acceptance: Except as provided in the terms of the "Notices" paragraph below, the terms and conditions set forth herein contain the sole, entire and exclusive agreement between eConnek and the Buyer in this transaction and supersede all prior discussions, proposals, negotiations, representations, and agreements; except as expressly provided herein any additional or conflicting terms, whether or not material, shall not, in any manner, govern the relationship between eConnek and Buyer. eConnek objects to and shall not be bound to any terms or conditions not set forth herein, including any additional or different terms on Buyer's purchase order, acknowledgment, shipping documents, or otherwise which shall be accepted for billing purposes only, and any inconsistencies or differences therein with the provisions hereof shall be null and void. Shipment pursuant to Buyer's order containing different or additional terms does not constitute acceptance of such terms, and eConnek will not be bound by the laws of any land regarding its ability to provide commodities, technology, software or support in the event an export license is required and is rejected by the U.S. Government. ANY WAIVER, MODIFICATION, OR AMENDMENT OF THESE TERMS AND CONDITIONS SHALL ONLY BE EFFECTIVE AGAINST eCONNEK ONLY IF SUCH WAIVER, MODIFICATION, OR AMENDMENT IS CONTAINED IN A WRITTEN INSTRUMENT DULY EXECUTED BY eCONNEK.

Acceptance: All orders are subject to acceptance by eConnek. eConnek complies with all laws and regulations and requires all international orders to be analyzed for usage and final destination. Acceptance and shipment of orders is contingent upon obtaining any required governmental authorizations. The time for certain compliance checks and resulting requirements may take in excess of the 48 hour turnaround.

Price and payment: All orders shall be priced in accordance with eConnek's price quotation and confirmed by eConnek's Order

Acknowledgement. Payment must be received via credit card prior to shipment of goods. These are the terms of payment for all shipments. If at any time in eConnek's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to eConnek, or inadequate to meet the obligations hereunder, the terms of payment may, at eConnek's option, be revised or withdrawn, and eConnek may require cash or other satisfactory security before making further shipments to Buyer. Acceptance by eConnek of less than full payment shall not be a waiver of any of eConnek's rights. In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, eConnek may defer further delivery of goods hereunder or may, at its option, cancel all further delivery of goods to Buyer. In the event eConnek is required to commence collection action to recover unpaid invoices of goods sold and delivered, eConnek shall be entitled to interest on the unpaid balance at the highest legal rate permitted from the due date of invoice, attorney's fees, and costs of suit. Delays in transportation shall not extend term of payment. All prices are subject to adjust without any prior notice. Should the change in the price change, such increases or decreases will be invoiced automatically without notice. eConnek reserves the right to renegotiate prices on that portion of an order scheduled for shipment more than six months from the order entry date, unless eConnek specifically agrees to fixed prices beyond six months. Unless otherwise state herein, all tools required to produce the goods sold will remain the property of eConnek.

Taxes: All prices are quoted exclusive of any tax, fee, duty, assessment or charge, unless specifically stated and if paid by eConnek, shall be added to the price or prices set forth herein. Any taxes, where applicable, will be billed as separate items unless Buyer provides eConnek with properly executed tax exemption certificate.

Shipments: Unless otherwise specified, boxing and packing for domestic shipment are included in the quoted price. When special domestic or export packing is specified involving greater expense than customarily supplied, a charge may be made to cover such extra expense. When ordering, state clearly the method of

shipment. Unless otherwise specified, we normally use the best, least expensive surface transportation. Reasonable care is exercised in packing our products for shipment and we assume no responsibility for delay, breakage, or damage after having made delivery in good order to the carrier. All claims for breakage and damage should first be made to the carrier, but we will be glad to render all possible assistance in securing satisfactory adjustment of such claims.

Delivery: Shipment dates are estimates only, are subject to production limitations and factory schedules, and hence are not guaranteed. In no event shall eConnek have any liability, consequential or otherwise, as a result of eConnek's delay or failure to deliver product for any reason. All international sales will be shipped EX Works-shipping point. If shipment directions for logistics from Buyer are lacking, eConnek will use its discretion in choice of carrier and will prepay freight and bill the cost to Buyer. eConnek reserves the right to make partial shipments unless advised by Buyer and to be paid on the terms hereof for such deliveries. eConnek reserves the right to allocate inventories and production. Each order shall constitute an independent transaction and payment therefore shall be due accordingly. If Buyer is in default at any time under any order with eConnek or eConnek is dissatisfied with Buyer's financial condition. eConnek shall have the right, without prejudice to any other of its rights, of suspending deliveries until such default or condition is remedied.

Title and risk of Loss: Title and risk of loss of the goods shall pass to the Buyer upon delivery of goods to carrier at shipping point. eConnek is under no obligation to insure shipments unless specifically requested by Buyer and then only at Buyer's expense and valuation.

Allocation, etc.: eConnek shall have the right to curtail deliveries or allocate its supply of materials among all of its customers in any manner which in its sole discretion, and eConnek shall not be responsible in any manner for losses or damages which Buyer may incur as a result of any such, curtailment, or allocation by eConnek. eConnek shall not be required to remedy any goods not so delivered.

Limited Warranty: eConnek warrants only that the goods at the time of shipment furnished shall meet the specifications stated herein or attached hereto. Any technical advice given by eConnek in reference to the use of its products is given gratis and without any warranty whatsoever as to advice given or results obtained. THE WARRANTY GIVEN IN THIS PARAGRAPH IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. Any model or sample shown to Buyer was merely illustrative and was not a warranty that the goods would conform to the sample. No agent, employee, or representative of eConnek has any authority to bind eConnek to any warranty concerning the goods sold hereunder other than that set forth in these terms and conditions, and unless such is specifically included within these terms and conditions, it shall not be enforceable by Buyer. This warranty extends only to Buyer and does not extend to purchasers or users of Buyer's products

eConnek's liability and buyer's EXCLUSIVE REMEDY are expressly limited to the replacement of defective goods with conforming goods, EXW-Shipping Point, or credit for the net unit billing price. Such replacement or credit will be made only if:

- a) A claim of defective goods is made by the buyer within 90 days after the receipt of goods,
- b) The buyer, after obtaining our permission, returns such goods to eConnek™, freight prepaid for inspection and/or replaced (Material returned without our specific permission will not be received or credited), and
- c) Our inspection determines that the goods were at the time of shipment defective within the terms of this warranty. Returned material which is damaged due to improper handling by the buyer or repackaging will not be accepted and will be deemed property of the buyer

Return Policy:

Returned merchandise for credit will be accepted on manufacture defective goods only. Any returned merchandise which is damaged due to improper handling by the buyer, repackaging of the goods, misuse or negligence will not be accepted for credit. The items will be inspected at the time of return. If the items returned are not rendered as defective due to manufacturing error, the return shipping back to the buyer will be the responsibility of the buyer. Exchanges can be made within 15 days of receipt on any items that are not damaged and must be in their original packaging. All shipping charges on exchanges will be the buyers' responsibility.

Indemnification: Buyer agrees to indemnify and defend eConnek against any claim or litigation, or to pay or reimburse any judgment and all loss and expense costs (including reasonable attorney fees) incurred in connection with any claim or litigation which asserts or is based upon any alleged design defect in eConnek products to the extent that the Buyer provided design information or related parts or components to Hypertronics for its products.

Exclusive Remedy of Buyer: eConnek's liability and Buyer's EXCLUSIVE REMEDY is expressly limited, at eConnek's option, to the replacement thereof with conforming goods at the shipping point, or credit for the net unit billing price, but such replacement or credit shall be made only if:

a) Claims for shortage, subject to the terms of the "Allocation" paragraph above, or defects must be made within fifteen (15) days after the receipt of goods.

b) Claims for defective goods are made by the buyer within 90 days after the receipt of goods.

c) Buyer must, after obtaining RMA authorization from eConnek, return such goods to eConnek, freight prepaid for inspection and replacement (Material returned without specific authorization from eConnek will not be received or credited), and

d) eConnek's inspection determines that the goods were at the time of shipment defective within the terms of this warranty. eConnek shall not be liable for any material converted to forms other than originally shipped by eConnek.

Returned material which is damaged due to improper Buyer handling or packaging will not be accepted and will be deemed property of Buyer.

Limitation of liability: The remedies of Buyer set forth herein are exclusive. eConnek assumes no liability except as expressly provided in these terms and conditions, and in no event shall eConnek be liable for any consequential, incidental, special or indirect damages, arising out of or in connection with this agreement, whether arising in contract, in tort, under any warranty or otherwise, and whether or not based on any negligent act or omission or any other basis. Buyer assumes all risk, liability, and damage resulting from the use of the goods, whether used singularly, or in combination with other goods, or technical advice furnished, or of specification changes.

Certification of material goods: Should Buyer request certification of materials or goods after sale, eConnek reserves the right to quote additional charges for such request. Unless otherwise included under these terms and conditions, no certification is given concerning either the material or goods sold hereunder.

Patent infringement: eConnek reserves the right to discontinue deliveries of any material, the manufacture, sale or use of which in eConnek's opinion would involve patent infringement. Buyer shall indemnify and hold harmless eConnek, its successors and assigns and affiliates against and from any and all damages, claims, and judgments for damages and costs arising out of any suit alleging infringement of any U.S. or foreign patent or trademark by the goods supplied by eConnek under this order made in accordance with any design and/or specification furnished by Buyer to eConnek; and Buyer shall, if eConnek desires, defend eConnek, at Buyer's expense in any such suits for alleged infringement.

No Intellectual Property Licenses: eConnek retains ownership of all designs, inventions and other intellectual property rights in all goods sold to Buyer, regardless of any contribution by Buyer, and is not providing Buyer with any license thereto, expressed or implied, unless specifically identified in these terms of sale.

Cancellation: eConnek may cancel the Agreement formed by these terms and conditions at any time in the event that Buyer shall fail to perform or observe any term or condition hereof by giving Buyer written notice of cancellation. Cancellation hereunder shall not prevent eConnek from pursuing any other remedy available to eConnek by law or from seeking all damages to which eConnek may be entitled. Buyer may cancel an order only upon prior written notice and upon payment to eConnek for reasonable and proper cancellation costs which shall not exceed the contract price for the items canceled. Upon Buyer's cancellation of this order, Buyer will pay for and accept delivery of any goods already in production or that have been shipped.

Assignment and Applicable Law: This Agreement shall extend to and be binding upon the parties hereto, their successors and assigns, provided, however, that Buyer may not assign this Agreement without the written consent of eConnek and any such assignment without consent shall be void. This contract is to be governed by and construed in accordance with the laws of Massachusetts (other than conflicts of laws provisions).

Notices: All notices hereunder shall be deemed given if delivered in writing personally or sent by certified mail or facsimile to Buyer or eConnek at the addresses set forth on the front of this form. Any notice given by certified mail shall be deemed given three business days following the time such notice is deposited in a U.S.A. post office, postage prepaid.

Confidentiality: All obligations of confidentiality owed to eConnek or its affiliates by Buyer with respect to any materials or information furnished to Buyer subject to such obligations shall remain in full force and effect and nothing herein shall affect such obligations.

Quantity: eConnek may deliver, and Buyer will accept delivery of, a greater or lesser quantity not to exceed ten percent (10%) of that ordered.

Changes: No changes can be made in the goods ordered hereby without the consent of eConnek. eConnek reserves the right to adjust the price, change the delivery schedule or make any other revisions in this order with respect to any such approved changes. eConnek reserves the right to make changes in design at any time

and without incurring any obligation to provide changes on the units previously purchased, or to continue to supply obsolete items or earlier versions of changed items.

Errors subject to correction: All typographical, stenographic and arithmetical errors are subject to correction. **Verbal Purchase Orders:** If verbal purchase orders are entered by eConnek for production and/or shipment prior to receipt of written documentation from Buyer, such orders are accepted as an accommodation to Buyer and in such instances, the sale is to be governed by the terms and conditions hereof, and no others, regardless of any written documentation subsequently furnished by Buyer.

Export-Import Controls: The Buyer shall make every effort to comply with US laws and regulations. As a minimum the Buyer shall not facilitate or support any shipments to Embargoed/Sanctioned countries, Denied persons as defined by the Federal Register, Proceed with transactions with *knowledge* that a violation occurred or is about to occur, Support of an export, reexport, and/or transfer: proliferation activities and tech. assistance of encryption items, End Use/User Controls-Nuclear, Missile Tech, Chem/Bio, WMD: all items subject to EAR: "*know*" or are "*informed*" applies: Entities list-supplement 4, In-transit shipments and unloading. Such exports, reexports and other conduct are prohibited unless authorized by a license. eConnek shall not be liable if any authorization is delayed, denied, revoked, restricted, or not reviewed, and Buyer shall not be relieved of its obligation to pay eConnek in such event.