

DBSPECTRA, INC
TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale ("Terms") govern the sale of Products and Services provided by dbSpectra, Inc. ("dbSpectra"). "Product" means any hardware or consumables sold under these Terms. "Service" means any standard support service to support Products or training. "Specifications" means technical information about Products published by dbSpectra and in effect on the date dbSpectra ships the order.

1. QUOTATIONS AND ORDERS

- a. All orders are subject to acceptance by dbSpectra. Orders are governed by the applicable trade term specified on the quotation or agreed to by dbSpectra as defined in Incoterms 2000.
- b. Only written quotations are valid and are acceptable within 30 days only, unless otherwise extended in writing. Quoted shipping costs are best estimates only.
- c. Prices exclude any applicable sales, value added or similar tax payable by Customer.
- d. Prices are subject to change without notice.
- e. All orders are subject to the approval of the dbSpectra Credit Department. If credit is not approved, shipment of the ordered Product can only be made with terms of Cash in Advance. No COD orders will be accepted. Credit card purchases are subject to prior authorization by the credit card company.
- f. Verbal orders are valid only at current pricing in effect at the time of the order. An order becomes officially accepted when acknowledgement is forwarded to the Customer.
- g. Payment terms are stated in the quotation or acknowledgment documentation, and are subject to change if Customer's financial condition or payment record merits such change. dbSpectra may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other dbSpectra agreement if, after ten (10) days written notice, the failure has not been cured.
- h. For any standard product order that is cancelled, a 25% cancellation fee will be charged regardless of the production stage of the order at the time of the request.

2. SHIPMENTS AND DELIVERY

- a. All prices, unless otherwise stated, are EXW dbSpectra factory in Lewisville, Texas. Title to Products will pass to Customer upon shipment.
- b. Prices include domestic packaging. Export packaging, if requested, is an additional charge.
- c. Acceptance occurs upon delivery to Customer.
- d. Shipments are made freight prepaid and freight is billed subsequent to shipment unless otherwise specified by Customer.
- e. Customer's routing will be used when possible. Shipments will be routed by dbSpectra's best judgment if the carrier specified by the Customer cannot be utilized. dbSpectra is not responsible for selecting lowest cost or fastest routing.
- f. dbSpectra will not be liable for contractual obligations due to delays in shipping.

3. CLAIMS AND RETURNS

- a. Claims for damaged or lost Product while the Product is in transit must be made immediately by the Customer against the carrier. UPS shipment claims for damage or loss of Product may be made by dbSpectra.
- b. Claims for shortages in Product shipment must be made within 30 days from date of shipment from dbSpectra's factory.
- c. Product returns are subject to dbSpectra approval and applicable charges.
- d. **No Product returned to dbSpectra for any reason will be received or accepted by dbSpectra without written authorization and Return Authorization Number (RMA).** All shipping charges on returned Product must be prepaid by the Customer. In no event will dbSpectra be liable for consequential damages, installation costs or other cost of any nature as a result of the use of the Products manufactured by dbSpectra, whether used in accordance with instructions or not. dbSpectra will not be responsible for any Product returned without dbSpectra's prior written authorization or for Product shipped freight collect.
- e. If due, credit not exceeding 75% of the original price will be allowed on unused Product, provided it is returned prepaid in new condition within sixty (60) days of shipment. Credit is only issued to the original purchaser and not to any subsequent owner.
- f. **All SPD and NPD model number items are considered SPECIAL and are NON-CANCELLABLE and NON-RETURNABLE.**

4. WARRANTY

- a. dbSpectra warrants that, at the time of shipment, the products furnished by dbSpectra are free from defects in material and workmanship. dbSpectra's obligation under this warranty is limited to replacement or repair of such products within one year from the date of shipment. No products will be accepted for replacement or repair without prior written approval. Replacement or repair (dbSpectra's option) will be made only after examination at dbSpectra's Lewisville, Texas factory shows defective material or workmanship that occurred at the time of manufacture. **THIS WARRANTY IS THE ONLY WARRANTY MADE BY DBSPECTRA AND IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSES. DBSPECTRA IS NOT LIABLE FOR ANY OTHER DIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, INSTALLATION COSTS, INCONVENIENCE, RENTAL OF REPLACEMENT EQUIPMENT, LOSS OF PROFITS OR OTHER COSTS OF ANY NATURE AS A RESULT OF THE USE OF THE PRODUCTS MANUFACTURED BY DBSPECTRA, WHETHER USED IN ACCORDANCE WITH INSTRUCTIONS OR NOT. Certain products may have EXTENDED LIMITED WARRANTY.**

5. LIMITATION OF LIABILITY AND REMEDIES

- a. In no event will dbSpectra or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, lost profits, or cost of cover) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.
- b. The remedies in these Terms are Customer's sole and exclusive remedies.

6. GENERAL

- a. dbSpectra will store and use Customer's personal data in accordance with dbSpectra's Privacy Statement. dbSpectra will not sell, rent or lease Customer's personal data to others.
- b. dbSpectra reserves the right to modify equipment and change specifications without notice, provided the modification does not materially affect the performance of Product manufactured by dbSpectra.
- c. Disputes arising in connection with these Terms will be governed by the laws of the State of Texas.
- d. To the extent that any provision or a portion of any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.
- e. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.
- f. These Terms and any supplemental terms applicable to the order constitute the entire agreement between dbSpectra and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. **CUSTOMER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS WILL NOT APPLY.**
- g. dbSpectra may assign or transfer any of its rights or obligations under these Terms upon notice in connection with a merger, reorganization, transfer, sale of assets or product lines, demerger or spin-off transaction or change of control or ownership of dbSpectra, or its permitted successive assignees or transferees.