



# eMagin Corporation Customer Terms and Conditions Policy

---

As Modified October 2020

## 1. ACCEPTANCE – AGREEMENT

All purchase orders (“Orders”) shall be in writing and subject to written acceptance by eMagin Corporation (“eMagin” or “Seller”). If for any reason eMagin should fail to accept in writing, eMagin's commencement of work on the products subject to the purchase order (the "Products") or shipment of the Products, whichever occurs first, shall be deemed an effective mode of acceptance. These Terms and Conditions of Sale and any attachments shall control over any conflicting or inconsistent terms or conditions or any purchase order of Buyer, notwithstanding any provision to the contrary in such purchase order; provided, however, that these terms and conditions are superseded by those appearing in any applicable written eMagin quotation. Neither eMagin's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions.

## 2. PRICE QUOTATIONS

Price quotations are only solicitations for offers and not offers which may be accepted by Buyer. Unless otherwise agreed to in writing by eMagin, all quotations expire thirty (30) days after the date of the quotation. All prices quoted are valid only if Buyer's requested delivery date (including any change orders) is within twelve (12) months of the date on which the original Order is placed.

## 3. TAXES

Unless otherwise agreed to in writing by eMagin, all prices quoted are exclusive of any federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs. Buyer agrees to pay such charges unless Buyer has provided eMagin with an exemption certificate acceptable by eMagin and the applicable authority. When applicable, such charges shall appear as a separate item on eMagin's invoice.

## 4. PAYMENT

Payment is due at time of order unless credit terms have been established with eMagin. If credit terms have been established, Buyer shall pay all invoices within thirty (30) days from the date of invoice, unless other terms are agreed to in writing by eMagin. All payments shall be made in United States currency, net of any wire costs, bank fees, currency exchange rates or other similar fees. eMagin shall have the right to cancel any previously accepted Order placed by Buyer, change the credit terms, or refuse or delay shipment if Buyer fails to meet payment schedules or financial requirements established by eMagin. If Buyer shall be at any time overdue on payments, eMagin may impose late fees at the rate of one and one-half percent (1.5%) per month, or such lesser amount as imposed by law, on the past due amount until Buyer is current on all past due amounts. The Buyer shall grant, and by acceptance of the Products, shall be deemed to have granted to eMagin a first security interest in all Products to secure payment of the purchase price.

## 5. VOLUME PRICING

All price quotations are dependent on the quantity of Product ordered. In the event that Buyer's purchase order is received with the number of units and/or price different from the terms of the eMagin quote provided, eMagin reserves the right to reject the purchase order. If the actual number of units invoiced under the terms of the relevant purchase order, including all change requests and addenda, is less than the total number of units requested on the original order, Buyer will pay eMagin for the difference in the selling price. The amount owed to eMagin will be calculated as the difference in the selling price for quantity quoted and the quantity delivered multiplied by the number of units actually shipped, and Table 1 set forth below is an example of this calculation. An invoice for such additional amount will be sent by eMagin to Buyer and eMagin reserves the right to reject any future purchase orders until this invoice is paid in full.

**Table 1: Amount owed if pricing terms of purchase order are not met.**

	Quantity	Price
Quantity Quoted	100	\$10
Actual Quantity ordered	70	\$15
Amount owed = $70 * (\$15 - \$10) = \$350$		

## 6. DELIVERY

All U.S. domestic deliveries will be shipped FOB eMagin's facility, freight collect. All international deliveries will be shipped EXW eMagin Incoterms 2020. In the absence of specific instructions, Seller will select the carrier. Freight costs will be prepaid and added to the invoice based on common courier rates. Products shall be shipped in eMagin's standard packaging and will contain a Certificate of Conformance indicating that the Products comply with eMagin's specifications. eMagin shall use reasonable efforts to meet delivery dates quoted or acknowledged but will not be liable for its failure to meet such dates. Partial shipments shall be permitted.

## 7. RISK OF LOSS AND TITLE

Legal title and risk of loss shall pass to Buyer upon delivery by eMagin to the carrier at eMagin's facility.

## 8. DELAYS IN PERFORMANCE

eMagin shall not be liable for any delay in performance due to unforeseen circumstances or due to causes beyond its control including, but not limited to, acts of God, natural disasters such as floods, earthquakes or severe weather events, epidemic, pandemic, quarantine, acts of government, acts of terrorism, civil unrest, generalized lack of availability of raw materials or energy, fire, explosion, labor disputes labor strikes or slowdowns, failure of power or restrictive governmental or judicial orders or decrees, delays in transportation, equipment breakdown, delays in delivery, inability to deliver by eMagin's suppliers or inability to obtain an export license. In the event eMagin is unable to wholly or partially perform because of any cause beyond its control, eMagin may terminate the Order without any liability to Buyer.

## 9. INSPECTION

Unless Buyer notifies Seller in writing within ten (10) calendar days from the date of receipt of any Products that said Products are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, it must also specify the reason why the Products are being rejected.

## 10. WARRANTY

(a) eMagin warrants that the Products except for Engineering Samples or B-Grade components/assemblies as set forth in 10 (c) below will (i) be sold to Buyer free and clear from any liens or encumbrances; (ii) at the time of shipment and for a period of twelve months thereafter be free from defects in material and workmanship; and (iii) will conform to eMagin's applicable specifications. In the event of a breach of the foregoing warranty, and upon receipt of written notice thereof and a designated Return Merchandise Authorization (RMA) supplied by eMagin, eMagin shall, after product return evaluations and confirmation of non-conformance, replace the non-conforming Product. Buyer shall be responsible for the cost of shipping the suspected defective Product to Seller. This warranty shall not apply to any Products that have been, by Buyer or otherwise, subjected to testing for other than specified electrical characteristics or to operating and/or environmental conditions in excess of the maximum values established in applicable specifications, or have been the subject of mishandling, misuse, neglect, improper testing, repair, alteration or damage. This warranty excludes all costs of shipping, customs clearance and related charges outside the United States.

(b) After issuance of an RMA by eMagin, Buyer must return all defective parts no later than three (3) months after the effective date of the RMA, or the RMA will be void.

(c) Engineering Samples or B-Grade components/assemblies are specifically exempt from this Warranty. Replacement of any such Engineering Samples or B-Grade components/ assemblies is at the sole discretion of eMagin.

(d) THIS WARRANTY EXTENDS TO BUYER ONLY AND IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS OR SUFFICIENCY FOR A PARTICULAR USE OR PURPOSE INTENDED.

(e) This warranty extends to Products purchased directly from eMagin. Any eMagin Products purchased from an authorized eMagin distributor must be returned directly to them for all warranty claims and eMagin will not accept any warranty claims for these Products.

### (f) LIMITATION OF LIABILITY

IN NO EVENT SHALL EMAGIN BE LIABLE TO BUYER, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT. BUYER'S RECOVERY SHALL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS.



## **11. INDEMNITY**

eMagin understands that Buyer or its customers may incorporate the Product into end-user systems for use near the human eye. Buyer and its customers shall have sole and complete responsibility for designing and distributing any end-user systems in a manner that is free of defects and that do not create a risk of harm to users of the system or to others in the user's vicinity. Buyer indemnifies and holds eMagin harmless from any third party claims, damages or expenses arising out of any actual or alleged defect in such end-user system.

## **12. CANCELLATION AND TERMINATION**

No cancellation for default shall be effective unless eMagin shall have failed to correct such alleged default within (30) days after receipt by eMagin of a written notice of default. Once accepted, the Buyer may not cancel this order within quoted lead time of the scheduled delivery date as set forth in the quotation, except with written consent of eMagin and payment of cancellation charges as determined by eMagin, in its sole discretion. Cancellation charges will not exceed the amount of the applicable purchase order.

## **13. FACILITIES INSPECTION**

eMagin reserves the right to control access to its facilities.

## **14. GOVERNMENT CONTRACT CONDITIONS**

If Buyer's purchase order is pursuant to a U.S. Government contract, the contract number must be included on the purchase order. For such orders, eMagin maintains a list of U.S. Government representations and certifications which may be accessed at [www.SAM.GOV](http://www.SAM.GOV). Unless otherwise agreed in writing, eMagin shall retain all right, title and interest in any and all data to be provided pursuant to this order or contract. No U.S. Government procurement regulations shall be included hereunder, and such regulations shall not be binding on either party unless specifically agreed to in writing prior to incorporation herein.

## **15. CONFIDENTIAL INFORMATION**

Buyer will comply with the terms of any nondisclosure agreement between Buyer and Seller ("NDA"). If no such agreement exists, Buyer and its representatives (a) will protect and keep confidential the existence of any Order, its terms and conditions and any other information obtained from Seller in connection with any Order or related to the Products that is identified as confidential or proprietary or that, given the nature of such information or the manner of its disclosure, reasonably should be considered confidential or proprietary (including but not limited to Seller's pricing, technology, specifications and finances); and

(b) will use such information only for the purpose(s) for which it was originally disclosed and (c) will return all such information at Seller's request. Buyer shall not analyze, decompile or reverse engineer, chemically or otherwise, the Products to determine the identity and/or properties of components used to



manufacture the Products or for any other purpose. All such information will remain Seller's exclusive property, and Buyer will have no rights to use such information except as expressly provided herein. Buyer will not use any trade name, trademark, logo or any other proprietary rights of Seller in any manner without prior written authorization. Buyer will not issue press releases or publicity relating to Seller or this Order or reference Seller in any brochures, advertisements, or other promotional materials without Seller's written consent.

## 16. MISCELLANEOUS

- a. Notice. Any required notices shall be in writing and shall be deemed given when sent by U.S. Mail, registered return receipt requested or by recognized overnight courier at the address of each party set forth on the Quotation, or to such other address as either party may substitute by written notice to the other.
- b. Assignability. Buyer may not assign or transfer any of the rights, duties or obligations herein without the prior written consent of eMagin, and any purported attempt to do so shall be null and void.
- c. Non-waiver. eMagin's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- d. Export. Buyer shall comply with all applicable U.S. export control laws and regulations upon receipt of any eMagin products, software or technical data and shall not export or re-export (either directly or indirectly) such items or the direct product thereof except as permitted under such laws and regulations.
- e. Governing Law. This Order is governed by New York State law, excluding its conflicts of law rules. Buyer irrevocably submits to venue and exclusive personal jurisdiction in the federal and state courts of New York, New York County, for any dispute arising out of this Order, and waives all objections to jurisdiction and venue of such courts.
- f. Entire Agreement and Severability. These Terms, together with any NDA or any purchase agreement and specifications which may be referred to herein or attached hereto, set forth the complete and final agreement between the parties, and supersedes any and all prior or contemporaneous oral or written communications relating to its subject matter. Except as permitted herein, no amendment or modification of these Terms shall be effective unless in writing and signed by an authorized representative of both parties. If any of the provisions of these Terms shall be declared void by a court of final jurisdiction, such provisions shall be severed from the other provisions of these Terms, and the validity of the other provisions of the Terms shall not be affected thereby.