



communications

EOTech

TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale contained herein apply to all domestic and international sales entered into with **L-3 Communications EOTech, Inc. (L-3 EOTech)**. Any additional, different or conflicting terms or conditions on Buyer's purchase order, specifications or other documents issued by Buyer shall be wholly inapplicable and is hereby rejected and shall not bind L-3 EOTech. L-3 EOTech's silence or failure to respond to any such subsequent, additional, different or conflicting term, condition or proposal shall not be deemed to be L-3 EOTech's acceptance or approval thereof. No waiver or amendment of any of the provisions contained in these Terms and Conditions shall be binding on L-3 EOTech unless Buyer and L-3 EOTech execute a written agreement signed by an officer of L-3 EOTech which specifically modifies, supersedes and/or replaces these standard terms and conditions. Acceptance of all purchase orders is expressly made conditional upon Buyer's assent, expressed or implied, to the terms and conditions set forth herein without modification or addition.

1. **Product.** "Product(s)" is defined as goods manufactured and/or procured by L-3 EOTech and subsequently sold and delivered to Buyer.
2. **Orders.** Buyer's order must be submitted to L-3 EOTech in writing via U.S. Mail, courier, facsimile or electronic transmission and are subject to acceptance by L-3 EOTech. Orders must specify Product, Quantity, Price, "Ship To" Address and requested Delivery Date. Any product not specifically listed on L-3 EOTech's Price List constitutes a Special Order. Special orders accepted by L-3 EOTech are not subject to cancellation by Buyer. L-3 EOTech will access a 15% cancellation fee for general orders unless duly cancelled by Buyer in writing sixty (60) days prior to delivery.
3. **Acceptance of Purchase Orders.** Buyer's acceptance of these Terms and Conditions of Sale shall be indicated by any of the following, whichever first occurs: a) Buyer's making of an offer to purchase Product from L-3 EOTech; b) Buyer's written acknowledgment thereof; c) Buyer's acceptance of any part of shipment specified for delivery; or d) any other act or expression of acceptance by Buyer. L-3 EOTech shall confirm its acceptance of orders with delivery information with an order acknowledgment via electronic mail or facsimile. No order shall bind L-3 EOTech until duly accepted by L-3 EOTech in writing. L-3 EOTech reserves the right to cancel any accepted order wherein L-3 EOTech notifies Buyer of a processing defect, including but not limited to, credit holds, which Buyer does not cure within sixty (60) days.
4. **Prices.** Price(s) is specified in the current L-3 EOTech Price Lists, which are subject to change at any time, in L-3 EOTech's sole discretion. Prices for Product(s) shall be those in effect at the time of order acceptance regardless of Buyer's quoted price on Purchase Order. L-3 EOTech Price Lists exclude all taxes, duties and fees. Buyer shall assume responsibility for any and all applicable federal, state, municipal and other government taxes, tariffs, duties, value-added, withholding and all other taxes on shipments of Products and its manufacture, use and distribution of goods (except taxes based on the gross or net income of L-3 EOTech). In addition, on orders for shipment outside the United States, all required import/export duties, licenses and fees shall be payable by Buyer.
5. **Payment.** L-3 EOTech shall submit an invoice to Buyer detailing an itemized cost for the order. Buyer shall pay for the quantity of Products to be delivered. Payments for Product(s) shall be remitted to L-3 EOTech by Buyer in U.S. dollars to: L-3 Communications EOTech, Inc., 23484 Network Place, Chicago, Illinois 60673-1234. Payments can also be made via company check, credit card or a prepaid wire transfer with a confirmation of wire to L-3 EOTech on the date payment is made via the following facsimile: (734) 572-2306. Any payment made via credit card will be assessed a three percent (3%) processing fee if not made at time of shipment. Notwithstanding any net payment provisions specified on the invoice, L-3 EOTech shall not have a continuing obligation to deliver Products on credit terms, and any credit approval may be withdrawn by L-3 EOTech, in its sole discretion, at any time without prior notice. A finance charge of 1.5% per month, or the maximum rate permitted by law, shall be applied to all past due balances. L-3 EOTech shall have the unilateral right to offset any credits due toward outstanding balances. L-3 EOTech retains (and Buyer grants to L-3 EOTech by submitting a purchase order) a security interest in the Products to secure payment in full and compliance with these Terms and Conditions of Sale. Buyer agrees to execute any additional documents necessary to perfect such security interest.
 - A. **Domestic** - Payment for sales are to be made pursuant to the terms and amount stated on the order acknowledgment, without offset. Payment for sales from a Buyer located within the U.S. can make payment via bank transfer (wire) to L-3 Communications EOTech, Inc. Account #716487699, JP Morgan Chase Bank, 1 Bank One Plaza, Chicago, IL 60670, ABA#071000013.
 - B. **International** - Unless otherwise specified, payment is due prior to delivery of Product(s). A Buyer located outside the U.S. may apply to establish credit terms with L-3 EOTech. L-3 EOTech requires the disclosure and evaluation of Buyer's financial statements in order to extend credit terms to Buyer hereunder. Payment for sales from a Buyer located outside the U.S. can make payment via bank transfer (wire or irrevocable letter of credit) to L-3 Communications EOTech, Inc., Account #716487699, JP Morgan Chase Bank, One Chase Manhattan Place, New York, NY 10006, Chicago, ABA# 021000021 Swift Code, CHASUS33. Letters of credit must be furnished by Buyer in a form acceptable to L-3 EOTech. Letter of credit requirements shall be furnished as required. All costs related to opening, confirming, extending, and modifying such letters of credit shall be the responsibility of the Buyer.
6. **Delivery.** L-3 EOTech will deliver products by arranging shipping to the receiving area at the "ship to" address specified in Buyer's order. Delivery dates indicated on purchase orders are requests only. Buyer acknowledges and agrees that the delivery dates provided by L-3 EOTech upon its written acceptance of purchase orders are estimates only and may be changed. L-3 EOTech will use commercially reasonable efforts to deliver in accordance with the delivery dates in the acknowledgment, however, L-3 EOTech will not be liable for failure to deliver as estimated. Buyer agrees to accept partial deliveries when Product becomes available, unless Buyer's written order specifically stipulates the order must be shipped complete with all products. Delivery is subject to the payment terms set forth herein. Transportation and handling charges are payable by Buyer as specified in L-3 EOTech's invoice. In no event shall L-3 EOTech's delivery of Product be construed or interpreted as a transfer of intellectual property rights. Any product provided by L-3 EOTech shall be deemed accepted by Buyer upon delivery.
7. **Packaging and Shipping.** Packing shall be in accordance with L-3 EOTech's standard commercial practices. L-3 EOTech shall utilize its carrier of choice for all shipments and shipping costs will be invoiced to Buyer accordingly. Shipping charges resulting from refused shipments will be immediately due and payable, including a 15% restocking fee of Product's invoice amount.
8. **Title.** Title and risk of loss or damage to products pass to Buyer upon L-3 EOTech's delivery to common carrier at Seller's facility in Ann Arbor, Michigan. Shipping shall be EXW Seller's Plant per the ICC 2000 INCO Terms.
9. **Service.** All L-3 EOTech's Holographic Weapon Sights are crafted with pride in the USA and manufactured with our customer's satisfaction in mind.
 - A. **Warranty.** L-3 EOTech guarantees every product to be free from manufacturing defects in material and workmanship under normal use for a period of two (2) years from the manufacturer's date or customer's proof of purchase (receipt). In the event a defect that is covered by the foregoing warranty occurs during the applicable period stated above, L-3 EOTech, at its sole option, will promptly repair or replace the product without charge to the customer, and such action on the part of L-3 EOTech shall be the full extent of L-3 EOTech's liability. All costs associated with product shipment to L-3 EOTech will be incurred by the purchaser/end-user. L-3 EOTech will incur costs associated with product return to purchaser/end-user. This warranty does not cover a product (a) used in other than its normal and customary manner; (b) subjected to misuse; (c) subjected to alterations, modifications or repairs by the Customer or by any other party other than L-3 EOTech without the prior written consent of L-3 EOTech; (d) special order or merchandise sold "as is" by L-3 EOTech; or (e) merchandise that has been discontinued by the manufacturer and either parts or replacement units are not available due to reasons beyond the control of L-3 EOTech. L-3 EOTech shall not be responsible for any defects or damage that in manufacturer's opinion is a result of mishandling, abuse, misuse, improper storage or improper operation, including use in conjunction with equipment which is mechanically incompatible with or of inferior quality to the product, as well as failure to maintain the environmental conditions specified by the manufacturer. Parts used in repairing or servicing Product may be new, equivalent to new or reconditioned. Any breach of this warranty shall be waived unless the customer notifies L-3 EOTech within the applicable warranty period.

The customer understands and agrees that except for the foregoing warranty, no other warranties written or oral, statutory, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, shall apply to the product. All such implied warranties are hereby and expressly disclaimed.

Product Warranty Registration

Enclosed with every product is a Warranty Registration Card, L-3 EOTech requests purchaser/end-user complete card and return to manufacturer. In order to validate the warranty on a product that extends beyond two (2) years from original manufacturer's date, L-3 EOTech must receive a completed Product Warranty Registration Card along with proof of purchase (receipt) for each unit. Please complete the form and immediately mail it to our Warranty and Service Department at the following address: L-3 Communications EOTech, Inc., 1201 E. Ellsworth Road, Ann Arbor, Michigan 48108. Products qualifying for warranty repair will be either repaired or replaced within ten (10) business days of receipt of merchandise unless the customer is notified otherwise.

B. **Non-Warranty Service.** L-3 EOTech will service its Products outside the warranty period or perform out of scope enhancements. All costs associated with product service and shipment will be incurred by the purchaser/end-user.

C. **Returns.** L-3 EOTech will accept the return of merchandise provided the product(s) has been purchased within the last sixty (60) days and has not been used. L-3 EOTech will assess a fifteen percent (15%) restocking fee on any returned product(s).

Obtaining Service

Products sent to L-3 EOTech for service under warranty, non-warranty and/or return, must have a valid Return Authorization Number. Buyers obtain a Return Authorization Number by calling L-3 EOTech's Warranty and Service Department at 734-572-2178 during normal business hours or www.L-3com.com/eotech. If a product arrives at L-3 EOTech for service without a valid Return Authorization Number the product will be sent back to Buyer without service and billed the shipping fee. To obtain service on a product, send product with a valid return authorization number to the manufacturer at the address below, postage paid. All product(s) must be fully insured with the correct postage; L-3 EOTech will not be responsible for improper postage or missing or damaged merchandise during shipment.

L-3 Communications EOTech, Inc.
Warranty and Service Department
1201 E. Ellsworth Road
Ann Arbor, MI 48108
Reference: RA#

L-3 EOTech shall not, in any event be liable for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use such products. This warranty gives the purchaser/end-user certain legal rights, and possibly other rights, which vary from state to state.

10. **Limitation of Liability.** L-3 EOTech will not be liable for any claims, actions, suits, proceedings, costs, expenses, damages of liabilities arising out of the use of L-3 EOTech product(s). Operation and use of the product are the sole responsibility of the Customer. L-3 EOTech's sole undertaking is limited to providing the products and services outlined herein. L-3 EOTech's liability hereunder for damages, regardless of the form or action, shall not exceed the fees or other charges paid to L-3 EOTech by the customer or customer's distributor. L-3 EOTECH SHALL NOT, IN ANY EVENT OR UNDER CIRCUMSTANCES, BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE AGREEMENT TO SELL PRODUCT TO BUYER OR THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, INJURY AND OR DEATH, LOST INCOME, LOST REVENUE, LOSS OF GOODWILL, LOSS OF USE OR LOST PROFIT, WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT AT THE TIME OF PURCHASE, AND WHETHER OR NOT SUCH DAMAGES ARISE OUT OF A BREACH OF WARRANT, A BREACH OF AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY.
11. **Product Identification.** L-3 EOTech identifies each of its products with a unique serial number. This number will be utilized by L-3 EOTech for internal and external tracking purposes.
12. **Changed or Discontinued Product.** L-3 EOTech's policy is one of ongoing update and improvement. L-3 EOTech may revise and discontinue Product at any time in its sole discretion. L-3 EOTech will ship Product that has the functionality and performance of the Product ordered, but changes between what is shipped and what is described in the specifications, manual or catalog are possible. L-3 EOTech shall endeavor to provide notification of changes in Product's form, fit, function, specifications or discontinuance, however L-3 EOTech has no obligation and/or liability for failure to notify Buyer.
13. **Intellectual Property Rights.** L-3 EOTech shall retain all copyright, patents, trademarks, trade secrets and other intellectual property rights it possesses with regard to any and all design, process, or manufacturing technologies. L-3 EOTech shall also retain any and all other proprietary rights in and to the Products, Software, documentation and other related materials, and all copies and derivative works thereof (by whomever produced). Nothing herein shall be construed to grant to Buyer any right or license in any copyright, patent, trademark, trade secret or any other intellectual property right.

Infringement

L-3 EOTech shall indemnify Buyer against any alleged infringement claim, limited to the value of the applicable order, that product(s) directly infringes a U.S. patent or copyright, if customer: (i) promptly notifies L-3 EOTech of the claim in writing; (ii) cooperates with L-3 EOTech in the defense of the claim; and (iii) grants L-3 EOTech sole control of the defense or settlement in the claim. L-3 EOTech has no obligation for any claim of infringement arising from: (i) L-3 EOTech's compliance with Buyer or third party specifications and/or designs; (ii) modifications made by Buyer or a third party, or (iii) Buyer's non-compliance with operator's manual. In satisfaction of an infringement claim, L-3 EOTech will replace or modify product(s) with non-infringing products that are functionally equivalent. This subsection states L-3 EOTech's total responsibility and liability and Buyer's sole remedy, for any actual or alleged intellectual property infringement.

14. **Software.** "Software" is defined as machine-readable code or firmware, which is owned by or licensed to L-3 EOTech, and resides in Product. The Buyer and or end-user is not authorized to reproduce, copy, modify, repair, decompile, reverse engineer, disassemble, reverse translate, or in any matter decode the Software.
15. **Indemnification.** Buyer shall defend, indemnify, and hold harmless L-3, its parents, subsidiaries and affiliates, and their respective directors, officers and employees and representatives, from and against any and all claims, suits, losses, liabilities, obligations, causes of action, damages, and expenses (including attorney's fees) relating to or arising out of any use of the Product by Buyer to its Customers.
16. **General**
 - A. **Force Majeure.** L-3 EOTech shall not be liable hereunder due to any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, yield problems, government actions, or inability to obtain materials, components, energy or transportation. In the event of any such delay, L-3 EOTech's failure to perform any obligation under these standard terms and conditions shall be extended by a reasonable period of time.
 - B. **Electronic Orders and EDI.** L-3 EOTech and Buyer may do business electronically, including order placement and acceptance. Once accepted, such orders will create fully enforceable obligations subject to these terms and conditions. Such orders and acceptances will be deemed for all purposes to be an original signed writing. Buyer and L-3 EOTech will adopt commercially reasonable security measures for password and access protection. Buyer will be responsible for any and all set up fees and costs associated with electronic orders and EDI.
 - C. **Export.** Orders are subject to any and all applicable laws and regulations of the United States relating to the export, re-export, delivery or transfer of the Product from the United States of America, including without limitation, the Export Administration Regulations (EAR) (15 C.F.R. Ch. VII, Subchapter C) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Ch. I, Subchapter M). Buyer shall not ship, transfer, export or use the Product in violation of applicable export laws, regulations or restrictions.
 - D. **Assignment.** Buyer may not assign its rights, delegate or otherwise transfer its obligations hereunder without the prior written consent of L-3 EOTech and any purported assignment or delegation without such consent shall be of no force or effect.
 - E. **Waiver.** Any waiver by L-3 EOTech of any default by Buyer shall not be deemed to be a continuing waiver of such default or a waiver of any other default or of any of the terms and conditions hereunder.
 - F. **Entire Agreement.** These terms and conditions of sale represent an entire agreement between L-3 EOTech and Buyer and are incorporated by reference into all domestic and international consultant, representative and distributor agreements. In the event any provision of these terms and conditions are held invalid, illegal or unenforceable that provision shall be severed and the remainder of the provisions will remain enforceable and unaffected thereby.
 - G. **Survival.** Any provision in these terms and conditions which by their nature extend beyond the termination or expiration of any sale of Product or Support will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
 - H. **Governing Law.** The validity, performance and construction of these terms and conditions, and any disputes arising from or relating thereto, shall be governed by the laws of the State of Michigan, U.S.A. All disputes shall be subject to the exclusive jurisdiction of the Michigan state and federal courts, and Buyer consents to the personal and exclusive jurisdiction and venue of these courts.
 - I. **Non-Disclosure.** L-3 EOTech will use Buyer related data, including but not limited to Buyer address and contact information. Unless otherwise agreed, Buyer accepts that such data will be used and distributed within L-3 EOTech and to certain third parties. Each party's confidential or proprietary information may, if required by the parties, be further defined and protected by separate Non-Disclosure Agreement and each party's sole and exclusive obligations with regard to such confidential and proprietary information shall be as set forth in such agreement.
 - J. **Independent Contractor.** L-3 EOTech is an independent contractor in the performance under these terms and conditions and neither L-3 EOTech nor any of its personnel are employees or agents of Buyer. Nothing in these terms and conditions will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.
 - K. **Headings.** The section headings used herein are for convenience of reference only and do not form part of these terms and conditions, and no construction or inference shall be derived therefrom.
 - L. **Language.** L-3 EOTech and Buyer confirm that it is their desire that these terms and conditions, as well as other documents relating hereto, including all notices, have been and will be drawn up in the English language only.