

- Limited Warranty. Supplier warrants the Products against defects in materials and workmanship for a period of one year after shipment to Customer. Supplier's sole and exclusive liability and Customer's sole remedy under this warranty shall be, at Supplier's option, to repair or replace any such defective Products. The Products which Customer considers defective shall be returned to Supplier with a copy of the receipt, by a method of shipment approved by Supplier in advance and per Supplier's standard Return Material Authorization procedures. Repair or replacement does not extend the warranty period for such Products. This warranty shall be void if in Supplier's reasonable opinion the defective condition was caused in whole or in part by Customer's misuse, neglect, testing, attempts to repair, or any other cause beyond normal usage, or by accident, fire, or other hazard.
- LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL SUPPLIER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, OR OTHER SUCH LOSS) ARISING IN ANY WAY OUT OF THIS AGREEMENT, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDING CASES IN WHICH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY LAW, SUPPLIER 'S AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID FOR THE PRODUCTS GIVING RISE TO SUCH LIABILITY, AS APPLICABLE, LESS REASONABLE RENTAL FOR PAST USE OF THE PRODUCTS; PROVIDED, HOWEVER, IF CUSTOMER ENTERED INTO A SUPPORT AGREEMENT, SUPPLIER'S LIABILITY FOR SUPPORT SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.
- No Safety Approvals. Customer understands that the Products have not received any safety agency (e.g. Underwriters Laboratories) or regulatory agency (e.g. FCC) approvals, and that the Products must only be used by adults or with adult supervision.
- General. (i) This Agreement is governed by the laws of the State of California, without reference to its conflict of laws principles and excluding the U.N. Convention on the International Sale of Goods; (ii) Any dispute between the parties regarding this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located within the Northern District of California in connection with any action arising under this Agreement; (iii) Any required notices hereunder shall be given in writing at the address of each party set forth in the Business Terms, and shall be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered; (iv) Customer shall not assign this Agreement without the prior written consent of Supplier; (v) No modification to this Agreement, or any waiver of any rights, shall be effective unless assented to in writing by both parties and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default; (vi) This Agreement constitutes the entire and exclusive agreement between the parties hereto with respect to the subject matter hereof and supersedes any other communications with respect to the subject matter hereof; (vii) If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will continue in full force and effect and the invalid or unenforceable provision shall be reformed to the extent necessary to make it valid and enforceable.
- Questions. Should you have any questions concerning this Agreement, or if you desire to contact Supplier for any reason, please contact Life Cube, Inc.