



## Terms and Conditions of Sale

**1. ACCEPTANCE AND GOVERNING LAW:** These standard terms and conditions of sale apply to any sale or transfer of Product(s) by Seller to Buyer. Buyer accepts and agrees to be bound by this Agreement by: a) ordering based on a Seller's price quote or b) accepting or paying for Products. Seller objects to and rejects any additional or different terms or conditions in any form tendered by Buyer, including expressly rejecting any provisions that dictate that Buyer's terms control or any additional or different provisions in a Buyer's electronic business portal. Seller's failure to object to any provision or terms from Buyer will not be a waiver or amendment of any of the provisions of this Agreement. This Agreement is deemed to have been entered into in Ventura, California, and its interpretation shall be deemed to have been entered into in the State of California and its interpretation, construction, and the remedies for its enforcement shall be in accordance with California law, without reference to conflict of laws principles.

**2. PRICES, INVOICES AND PAYMENT:** Prices are quoted in United States (U.S.) dollars and do not include Federal, State, Local or Excise taxes. Seller's pricing and cost structure are confidential and Seller reserves the right to address an audit request accordingly. Applicable taxes in effect at the time of shipment will be added unless the Buyer has submitted a Certificate of Exemption to the Seller. All invoices are due and payable in full by Buyer in U.S. Dollars the earlier of (i) net 30 days after the date of invoice or (ii) the due date in an Order Document. All overdue amounts and may be subject to a monthly service charge equal to the lesser of (i) 1.5% or (ii) the maximum rate then permitted by law. For Products Delivered in installments, Buyer will pay separately for each installment. Seller may, without incurring any Seller liability, suspend or cease any Delivery and/or cancel any Orders if Buyer is in breach of this Agreement or an Order, or if Seller determines, in its sole judgment, that there is a risk that Buyer will not fulfill its obligations. Seller may require that Buyer make full or partial payment in advance, provide certain security or satisfy other conditions. Seller may enforce its rights under this Section without prior notice or demand.

**3. CREDIT AND ORDERING:** Orders are subject to timely approval by Seller's Credit Department. Payments by credit card are acceptable subject to proper authorization. All orders and requested changes to orders are subject to acceptance by Seller, which acceptance will be (i) through Seller's written order acceptance sent to Buyer, (ii) by Delivery, or (iii) through electronic acceptance using the parties mutually agreed upon method. Seller reserves the right in its sole discretion to reject any order given by Buyer regardless of whether Seller gave Buyer a price quote. Typographical errors are not binding and are subject to correction.

**4. DELIVERY AND TITLE:** Delivery of Products will be EX-WORKS (EXW) Seller's Plant (INCOTERMS 2010) to the location specified on Buyer's order. Seller works to provide 100% on-time delivery to the scheduled dates and will provide Buyer advance notice of any schedule change. Title to the products sold hereunder, along with the risk of loss or damage, shall transfer to Buyer when the products are delivered to the carrier.

**5. FORCE MAJEURE:** Either party is not liable for failure to perform the party's obligations if such failure is as a result of: (a) acts of God or of the public enemy; (b) acts of the Government in either its sovereign or contractual capacity; (c) fires; (d) floods; (e) epidemics; (f) quarantine restrictions; (g) strikes; (h) freight embargoes; (i) unusually severe weather; and (j) earth quake. No party is entitled to terminate this Agreement under Clause 8 (Termination) in such circumstances. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was notified



within ten (10) days of the likelihood or actual occurrence of an event described as (Force Majeure). In all cases, Seller shall use reasonable efforts to avoid or minimize all such failures, including exercising work-around plans or obtaining the Products from other sources.

**6. PACKAGING AND SHIPMENT:** All supplies provide under this Order shall be suitably prepared and packed for shipment so as to assure safe delivery. All freight and handling costs will be prepaid by the Buyer by being added to the order cost (aka: prepay and add) or shipped collect to the account number provided by the Buyer. Other arrangements specified by the Buyer shall be mutually agreed to by the Seller. If Buyer doesn't specify a carrier, Seller will choose carrier. Seller shall not be responsible for selecting the least expensive or the fastest routing but will select a major carrier like (UPS, FedEx, and DHL). International shipment duties and customs charges shall be paid by the Buyer. Buyer is responsible for goods lost in transit or damaged during shipment.

**7. QUALITY, INSPECTION AND REJECTION:** The Seller has a Quality Management System certified to AS9100 and ISO9001 for the Design, Manufacture, Test, and Inspection of RF and Microwave Electro-Mechanical Switches, Relays and Switch Matrices with applications in the Military, Space/Hi-Rel, and Commercial markets. Conditioned upon providing prompt notice within 5 days after Delivery, Buyer may reject any Products that do not conform to the applicable Order Documents. Any Product that is not properly rejected by Buyer in accordance with this Section is deemed irrevocably accepted. A verified nonconformance after the delivery period will be administered according to Section 8 Returns and/or Section 11 Product Warranty.

**8. RETURNS:** For Products returned, Buyer shall afford Seller a reasonable opportunity to inspect the Products and any return shall comply with Seller's Return Materials Authorization ("RMA") procedures. Remedies are conditioned upon Buyer giving prompt written notice to Seller within the applicable period, specifying the affected Product and the defect or nonconformance and returning all affected Products to Seller. Seller reserves the right to disposition any and all returned goods and equipment.

**9. CHANGE ORDER:** Any request for a change order from the Buyer shall be made in writing and no change shall be made pursuant to this clause unless agreed to in writing and signed by the Seller. If a change order causes an increase or decrease in the cost of labor and/or materials required in the performance of any part of the work and/or the production and/or delivery of the goods which are the subject of the order and change order, an equitable adjustment shall be made in the contract price quoted and agreed to for the goods and the schedule for delivery of the same shall be modified accordingly. Seller shall have no obligation to commence any extra or changed work relating to the change order without a written agreement as to adjustments to contract price and delivery schedules effectively thereby.

**10. SPECIFICATION:** All specifications of the Seller's products are subject to change without notice provided form, fit and function are not impact for existing orders. The Seller reserves the right to discontinue the manufacture of any product and will provide Buyer a 12 month notice. The Seller reserves the right to modify any product, goods and/or equipment without the consideration of compatibility of previously manufactured products.

**11. PRODUCT WARRANTY:** Products and goods sold by Seller and covered by this warranty are warranted to be free from defects in material and workmanship at the time of and for a period of 12 months from the date of shipment from Seller to the Buyer (i.e. delivery of same to the Buyer's carrier). Seller's warranty obligation hereunder shall be limited to making adjustments by repair, replacement, or refund of the purchase price of any goods and products at the option of the Seller, which are returned to the Seller within 12 months from the date of shipment by the Seller. In no event shall Seller be liable for



indirect, special, consequential or punitive damages for breach of warranty. This warranty and any remedy extend to Buyer and to Buyer's Customers.

**11.1** Adjustments shall not be allowed for products which have been damaged by lightning, subjected to abuse, improper application of installation, alteration or accident, negligence in use, storage, transportation or handling. Alteration or removal of the serial number or identification markings voids this Warranty. Seller shall have the right of final determination as to the existence and cause of a defect, whether adjustment will be allowed, and if allowed, whether adjustment will be by repair, replacement, or refund.

**11.2** Buyer will pay for all packing, transportation, and transit insurance costs for returned products. Products will be returned to the Buyer with transportation cost collect.

**11.3** The seller will use parts from the approved suppliers, Original Component Manufacturer (OCM)/Original Equipment Manufacturer (OEM) or authorized distributors to avoid counterfeiting of parts. The Seller also warrants that it has the right to sell its product and that said products are free from any third party encumbrance existing at the time of sale by the Seller.

**12. ASSIGNMENT:** Neither party may assign in whole or in part any of its rights and obligations under this Agreement without the prior consent of the non-assigning party; provided, that, either party shall be permitted to assign this Agreement, with prior written notice provided to the non-assigning party, if such assignment is part of a transaction involving the sale or transfer of substantially all of the assets of the assigning party provided that such assignment isn't to a Buyer competitor as reasonably determined by Buyer. Any unauthorized assignment shall be deemed null and void. The terms and conditions of this Agreement shall bind any permitted successors and assigns of either party

### **13. INTELLECTUAL PROPERTY:**

#### **13.1 Definitions –**

a. Intellectual Property (IP) is defined as any and all inventions whether or not patentable, utility models, methods, trademarks, designs, copyrights, trade secrets, in each case whether registered or unregistered, processes, techniques, procedures, documentation, data, plans, drawings, specifications, statements of work, requirements documents, part numbers, or other technical or business-related data or information identified as intellectual property by either Party, and in each case in any form or format including electronic, whether known at present or conceived or developed in the future.

b. Background IP is IP (a) (i) owned by either Party prior to this Agreement entering into force, or (ii) developed, generated or acquired by either Party at any time independently from the performance of this Agreement or prior agreements between the Parties or, (iii) licensed to either Party by third parties, and (b) required for the installation, integration, use, manufacturing, modification, test, or support of the Items.

c. Foreground IP is any IP conceived or developed in the performance of this Agreement or in the process of designing, developing, manufacturing, testing, modifying, or improving the Items to meet Buyer's requirements, whether known at present or conceived, developed or modified in the future.

**13.2 Background IP Ownership and License -** Nothing in this Agreement or the work contemplated within will alter ownership of Background IP. Seller is and remains the sole owner of all Background IP in any Item delivered hereunder.

**13.3 Foreground IP Ownership and License –** Buyer shall own Foreground IP developed by Seller which is paid for, partially or completely, by Buyer. The parties acknowledge and agree that such Buyer-owned Foreground IP does not include any IP that is used to manufacture or assemble any Item. All other Foreground IP developed by Seller shall be owned by Seller ("Seller Owned Foreground IP"). Seller hereby grants Buyer the following license to Seller Owned Foreground IP: Buyer is hereby granted a non-exclusive, worldwide, royalty-free, perpetual, irrevocable license (with rights to



sublicense) to use or modify the Seller Owned Foreground IP, as necessary to install, integrate, use, test, operate maintain or support (but not to manufacture or assemble) the Item and to translate or distribute all or any part of such Item or the Seller Owned Foreground IP to the extent necessary for Buyer's customers and end users.

**14. CODE OF BUSINESS CONDUCT & ETHICS:** The Seller and Purchaser are committed to conduct operations ethically and in compliance with the laws of the United States and any other country in which they do business. This includes laws against commercial bribery, payments to government officials and money laundering, and compliance with local tax laws, import/export regulations, and laws governing the payment of applicable customs and duties.

**15. TERMINATION:**

**15.1 CONVENIENCE:** If the Buyer terminates this contract for any reason other than due to the Supplier's material breach, the Buyer must provide 30 days written notice of contract termination and shall reimburse the Supplier in the amount equal to an agreed upon cancellation charge plus all of Supplier's costs incurred, up to and including the date of termination, that are related to such contract. Such costs include, but are not limited to, any finished goods, work in process, raw materials manufactured or otherwise procured in furtherance of this contract and any costs related to the Supplier's purchase obligations to its subcontractors, if any, that cannot be canceled without a cost to the Supplier. Supplier shall mitigate such costs to the extent reasonably practicable.

**15.2 DEFAULT:** a. Buyer may, by written notice to Seller, cancel all or part of this Contract: (i) if Seller fails to deliver the Goods within the time specified by this Contract or any written extension; (ii) if Seller fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, within ten (10) days after receipt of notice from Buyer specifying the failure, does not cure the failure or provide Buyer with a written detailed plan adequate to cure the failure if such failure reasonably cannot be cured within such ten (10) days and such plan is acceptable to Buyer's Authorized Procurement Representative; or (iii) in the event of Seller's bankruptcy, suspension of business, insolvency, appointment of a receiver for Seller's property or business, or any assignment, reorganization or arrangement by Seller for the benefit of its creditors.

b. Seller shall continue all work not canceled.

c. Buyer may require Seller to transfer title and deliver to Buyer, as directed by Buyer, any (i) completed Goods, and (ii) any partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively, "Manufacturing Materials") that Seller has specifically produced or acquired for the canceled portion of this Contract. Upon direction from Buyer, Seller shall also protect and preserve property in its possession in which Buyer or its customer has an interest.

d. Buyer shall pay the Contract price for completed Goods accepted. In addition, any payment for Manufacturing Materials accepted by Buyer and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" Article of this Contract, except that Seller shall not be entitled to profit. Buyer may withhold from any amount due under this Contract any sum Buyer determines to be necessary to protect Buyer or Buyer's customer against loss because of outstanding liens or claims of former lien holders.

e. If, after cancellation, it is determined that Seller was not in default, the rights and remedies of the Parties shall be as if the Contract had been terminated according to the "Termination for Convenience" Article of this Contract.

**15.3 FOR CAUSE:** Seller may by written notice to Buyer, without prejudice to any other rights or remedies provided under this Agreement, by law or in equity, terminate this Agreement and/or Purchase



Order(s) in whole or in part in any of the following circumstances: (i) if Buyer has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or (ii) if Buyer breaches its obligations to pay Seller any amounts due hereunder, or infringes upon Seller's Intellectual Property, or breaches its obligations under Article 13.2 or engages in gross negligence or willful misconduct or fraudulent activities in connection with this Agreement, and fails to cure such breach within 30 days after receiving written notice thereof from Seller. Upon Seller's delivery of a notice of cancellation to Buyer, Seller shall stop work and immediately take the necessary action to ensure that all work under this Agreement and/or Purchase Order(s) shall cease and unless otherwise agreed by the parties, that all subcontracts and agreements are forthwith terminated immediately.

**16. DISPUTES:** All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. Arbitration shall be conducted in English in Ventura County, California, U.S.A.. The arbitration panel shall include three arbitrators (unless a single arbitrator can be agreed upon by the parties). A judgment upon the award rendered by the arbitrator(s) may be entered thereon on a court of appropriate jurisdiction. The parties specifically agree to the binding nature of the arbitration

**17. SEVERABILITY:** If any term or condition of this Agreement is held invalid or unenforceable for any reason, the remaining provisions of this Order shall continue in full force and effect as if this Order had been executed with the invalid portion eliminated, provided the effectiveness of the remaining portions of this Order will not defeat the overall intent of the parties. In such a situation, the parties agree, to the extent legal and possible, to incorporate a replacement provision to accomplish the originally intended effect.

**18. ORDER OF PRECEDENCE:** All documents and provisions in this Contract shall be read so as to be consistent to the fullest extent possible. In the event of a conflict or inconsistency between the documents or provisions as incorporated into or attached to the Contract, the documents or provisions shall prevail in the order listed below, with the first document or provision listed having the highest precedence:

Document Title/Description:

- a. The system generated purchase order document
- b. This Purchase Order terms and conditions
- c. Specifications (the most recently agreed to and issued version of specifications shall control and Buyer's specifications will prevail over any subsidiary documents referenced therein)
- d. All other attachments, exhibits, appendices, documents or terms incorporated by reference in or attached to this

**19. ENTIRE AGREEMENT:** This Agreement is intended by the Parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings, written or oral, no usage of trade nor acceptance or acquiescence in a course of performance rendered under this Agreement shall be relevant to supplement, explain or determine the meaning of the terms of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and had opportunity for objection. No amendment or change of any kind shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer. WHEREFORE, the Parties acknowledge their understanding of all terms contained in this Agreement and all documents incorporated by reference.