

## TERMS AND CONDITIONS OF SALE

**GENERAL:** The Terms and Conditions of Sale contained herein apply to all quotations made, all purchase orders entered into by Seller, and acceptance by Seller of any order by confirmation shall be on the basis of these Terms and Conditions of Sale, even though no reference is made thereto at the time of acceptance. All terms and conditions contained in any oral or written communication, including, without limitation, Buyer's purchase order, which are different from, or in addition to, the Terms and Conditions of Sale herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of these Terms and Conditions of Sale. Buyer's assent to these Terms and Conditions of Sale shall be deemed to be given by implication unless Buyer gives written notice of objection to Seller promptly under receipt of this document. Any changes in the Terms and Conditions of Sale contained herein must specifically be agreed to in writing by an Officer of Seller before becoming binding on Seller.

**ACCEPTANCE AND MINIMUM ORDER QUANTITY:** All orders are subject to acceptance in writing by Seller or a duly authorized agent, and Seller reserves the right to accept or reject any orders in whole or part. Shipping dates on acceptance confirmations are approximate. Orders for Stock Cords must be in full case quantities. Seller reserves the right to ship and invoice Buyer for a quantity of products, which may vary up to five percent (5%) over or under the quantity requested by Buyer, and Buyer shall accept delivery and pay for such revised quantity. A handling charge will apply to orders with a value of less than \$500.

**CANCELLATION OF ORDERS:** Cancellation of an order is subject to acceptance by the Seller. Buyer will be responsible for taking delivery and paying for all products that are custom manufactured to Buyer's specifications. If raw materials have been purchased but not incorporated into finished goods, then a cancellation fee will apply based on the value of the raw materials.

**RE-SCHEDULING SHIPMENTS:** If the Buyer requests that the Seller delays the delivery schedule originally agreed upon by the two parties for a period of more than sixty (60) days, the order will be subject to storage and/or interest fees based on the quantity of product being held. If the order is delayed more than one hundred twenty (120) days, Seller has the right to ship and issue invoice for product that has been delayed by Buyer's request.

**PRICES:** Prices are firm for the period set forth in the quotation for the quantities listed, but are subject to revision if quantities and/or shipping schedules are changed by Buyer, or if the delivery schedule exceeds ninety (90) days from the purchase order date. Seller reserves the right to correct errors in pricing due to inaccurate or incomplete information, clerical mistakes or other causes.

**TERMS OF PAYMENT:** All payments must be in US Dollars. Payments made by wire transfer must include the wire transfer fee with no deductions from the amount due Seller. Orders are subject to credit approval by Seller, which may in its sole discretion at any time change the terms of Buyer's credit terms, or require payment in advance. Buyer agrees to submit such financial information as Seller may reasonably require for determination of credit terms and/or continuation of credit terms. Buyer agrees to pay according to the Seller's payment terms.

If Buyer fails to pay any invoice when due, Seller may hold shipment of any order(s), and/or hold production on products custom made to Buyer's specifications, until such payment is made. Buyer will remain liable to pay for any products already shipped. All past due amounts are subject to interest charges at the rate (1.5%) per month, or the maximum rate permitted by law. If Buyer fails to make payment when due, Seller may pursue any legal or equitable remedies, in which event Seller will be entitled to reimbursement of costs for collection and reasonable attorneys' fees.

Any disputed amounts should be reported immediately to Seller. If Seller agrees with the billing dispute, a credit memo will be issued to the Buyer for the amount agreed upon. All billing disputes must be reported within thirty (30) days of the invoice date, or will be deemed to be waived.

**SALES TAX:** When required by law, Seller will collect Federal, State and/or Local sale, use, excise, and other taxes that apply to a Buyer's shipment. These taxes are in addition to the purchase price of the products. Buyer will be charged tax unless Buyer is tax exempt and Seller has a valid signed tax exemption certificate on file.

**DELIVERY AND TITLE:** All products are shipped F.O.B. point of shipment. Products shall be deemed to be delivered and risk of loss shall pass to Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. Seller will make a good faith effort to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery date(s). Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller will not be liable for failure to deliver on such dates. Buyer shall pay, and be liable for, all costs of shipping, handling, delivery, and related insurance if required. Freight charges prepaid by Seller and added to Buyer's invoice are subject to handling fees. Claims for products damaged or lost in transit should be made by Buyer with the carrier, unless Seller is required to file the claim as Shipper. Buyer must report shortages or shipping errors to Seller within one (1) day of delivery.

**INSPECTION AND ACCEPTANCE:** Buyer shall have thirty (30) days from the date Buyer receives products to inspect such products for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such thirty (30) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such thirty (30) day period is a reasonable amount of time for such inspection and revocation.

**RETURNS:** Buyer must obtain a Return Material Authorization (RMA) Number from Seller prior to shipping any Product back to Seller. At the discretion of the Seller, unused and undamaged Stock Products in their original carton may, under certain circumstances, be accepted back for credit. A restocking charge may apply. Products returned due to defect or nonconformance will be returned to the Buyer and no credit issued if they are found to meet the specifications agreed upon.

**FORCE MAJEURE:** Seller shall not be liable for any failure or delay in manufacture or delivery resulting from any cause beyond the reasonable control of Seller, including by way of illustration and not by way of limitation, compliance by Seller with any Government or military regulation, or from acts of God, fires, or other casualty or accident, strikes, lockouts, factory shutdowns, or alterations, embargoes, riots or other disorders, delays or shortages in transportation, or inability to obtain sufficient quantity of fuel, power, labor, manufacturing facilities of materials or other supplies from the usual sources of Seller. Neither shall the Seller be held to the price of the product in his quotation and/or order acknowledgement, in the event cost of materials needed for the Seller's manufacturing process of the product, as the result of events listed in this paragraph, and being beyond the reasonable control of the Seller, would increase beyond what can normally be expected during the life of the contract. Should such cost increases occur, the Seller and the

Buyer agree to re-negotiate the price for the product based on the actual cost increases to the Seller for the Buyer's product as a result of said price increases of materials used in the manufacturing of the product in question. Delays due to the act of God or other circumstances over which the Seller has no control do not make the Seller responsible for airfreight charges or other faster modes of transportation that the Buyer may request to make up for any delay caused by circumstances as described above.

**LIMITED WARRANTY:** Seller warrants products sold to be free from defects in materials and workmanship to equal or exceed the applicable specifications at the time of shipment, or in the case of products custom made to the agreed specifications of the Buyer. Buyer's approval of sample(s) shall be proof that the product meets the agreed specification.

Seller's entire liability and obligation to Buyer under this warranty shall be expressly limited to the rework, replacement or crediting, as Seller may determine at its sole discretion, of any defective or nonconforming merchandise for which Buyer has first given written notice to Seller of such defect or nonconformity in the manner as provided below. No claim under this warranty shall be valid unless within thirty (30) days of its receipt of any merchandise hereunder, Buyer shall furnish Seller in writing notice of any defect in materials and/or workmanship or any nonconformity with any applicable specifications, specifying in detail any such defect or nonconformity. Absent such timely notice, Buyer shall be deemed to have waived any such defect or nonconformity which could be determined based upon a reasonable inspection of such goods. Other than with respect to the rework, replacement, or crediting of defective merchandise by Seller under the limited warranty as provided above, Seller shall have no obligation to Buyer with respect to any monetary damages by reason of such nonconformity or defect, and in no event shall Seller be liable to Buyer for any lost profits or consequential damages.

Seller shall have the option, exercisable in its sole discretion, of requiring the return to it or an authorized representative of the defective merchandise for inspection. No warranty will be allowed which, in the opinion of Seller, resulted from product being altered or reworked by other than Seller or an authorized representative or resulted from misuse, negligence or accident. In the event that some, but not all items of product are defective within the terms of the limited warranty set forth above, the rework, replacement or crediting of defective product at Seller's option shall apply only to such defective items falling within the terms of such limited warranty and Buyer shall have no right to return or seek credit for any items not so defective.

**THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE, AND SELLER SHALL HAVE NO FURTHER OR ADDITIONAL OBLIGATION WITH RESPECT TO ANY MERCHANDISE SOLD TO BUYER. ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY AND FITNESS FOR PURPOSE, ARE DISCLAIMED.**

**LIMITATION OF LIABILITY:** Seller's sole liability and Buyer's exclusive remedy for damages from any cause whatsoever (and regardless of the form of action) shall be limited to the rework, replacement or crediting, at seller's sole option pursuant to the limited warranty set forth above, of the specific product that cause the damages or are the subject matter of, or directly related to the cause of action. In no event shall Seller be liable for damages caused by Buyer's negligence of for any lost profits, or other incidental or consequential damages, including loss to other machinery or equipment of which a product of Seller is a part.

**DESIGN CHANGE:** In the event of a revision or design change on custom products manufactured to the Buyer's specifications, Buyer agrees to take delivery of all products manufactured prior to the time Buyer notified the Seller of the design change.

**TOOLING:** All costs for tooling which are incurred by Seller to make products for Buyer will be paid by Buyer in addition to the price of the products and are due and payable upon completion of the tooling. Unless otherwise agreed in writing, all such tooling shall remain in the possession of Seller, and Buyer shall not have any rights to possession or removal due to export laws at the manufacturing facility.

**RoHS COMPLIANCE:** It is the policy of Seller to identify and offer products to the Buyer as RoHS Compliant, only after specific requirements have been met. Seller performs no testing of product and relies solely on the manufacturer of the product for identification of RoHS Compliance. Product is offered as RoHS Compliant only after sufficient evidence is received from the component manufacturers, and has been determined to be RoHS compliant. Any relevant evidence will be filed and maintained for at least four years from the date of receipt.

**REMEDIES OF SELLER:** Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of orders or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law.

**ASSIGNMENT:** Buyer may not assign its rights or obligations hereunder without the express prior written consent of Seller.

**NON-WAIVER:** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by an Officer of the Seller.

**GOVERNING LAW:** The Terms and Conditions of Sale shall be governed by the laws of the State of California without regard to its choice of law rules. Jurisdiction to resolve any dispute regarding the Terms and Conditions of Sale and/or purchase order is held by the state courts of the State of California located in the County of Los Angeles. Should the matter require federal jurisdiction, then jurisdiction shall be held by the federal courts located in the Central District of California

**ENTIRE AGREEMENT:** The Terms and Conditions of Sale constitute the entire agreement with regard to this sale and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to said sale, including any terms and conditions on any of Buyer's documents or purchase orders. This agreement shall be binding upon the heirs, successors and assigns of the parties hereto. If any provision of this agreement shall be held to be invalid or unenforceable, the remainder of this agreement shall remain in full force and effect.

