

GENERAL TERMS AND CONDITIONS OF SALE

- A. The term "Seller" means Mesa Electronics, a California partnership, and/or its present and future subsidiaries, successors and assigns. The term "Buyer" means the third party placing the purchase order.
- B. No contractual relationship between Seller and Buyer will arise until such time as Buyer has placed an order which has been accepted by Seller.
- C. Stenographic and clerical errors are subject to correction.
- D. Subject to the provisions hereof, all quotes submitted are firm for 30 days from the date of the quotation unless indicated differently on the face of the quotation or withdrawn earlier by written notice. Alterations or changes of quotations after 30 days may be made at the discretion of Seller without notice.
- E. Orders are subject to all of Seller's General Terms and Conditions of Sale printed below.

1. **SCOPE.** The terms and conditions of sale contained herein, and as amended by Seller from time to time, apply to Seller's quotations and to purchase orders placed by Buyer on Seller. These terms and conditions may in some instances conflict with some of the terms and conditions on Buyer's form of purchase order or otherwise specified by the Buyer, or these terms and conditions may cover matters not addressed in Buyer's documentation. Therefore, acceptance of the Buyer's order is made only on the express understanding and condition that insofar as the terms and conditions of this acceptance conflict with any terms and conditions of the Buyer's order or cover matters not addressed in Buyer's documentation, Seller's terms and conditions govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgment, by implication, or by acceptance and payment for goods ordered. Seller's failure to object to provisions contained in any communication from Buyer will not be deemed a waiver of the provisions of this acceptance. Any changes from the terms and conditions of sale contained herein must be specifically agreed to in writing by an authorized officer of Seller before becoming binding on the Seller. These terms and conditions may supplement other documents provided by Seller, in which case these terms and conditions shall be construed consistent with such other documentation; provided, however, that nothing in such additional documentation shall be construed to limit any of Seller's rights and remedies set forth herein, or to increase Seller's liability to Buyer above and beyond the limitations set forth herein.

2. **TERMS AND METHOD OF PAYMENT – 2% 10, Net 30.** Unless expressly specified otherwise on the Seller's sales confirmation, payment terms for Buyers having an open account with Seller shall be 2% 10, Net 30 days from the date of Seller's invoice. Buyers who do not have an open account with Seller must make payment in full, before delivery of any part of the goods. To apply for an open account with Seller, Buyer must submit credit and bank references to Seller. Domestic Buyers who have an open account with Seller will be eligible for 2% discount of the invoiced amount (not including shipping and insurance) if payment is made in full within 10 days from the date of Seller's invoice. Credit card payments shall not be eligible for the 2% discount. International Buyers who have an open account with Seller may become eligible for the 2% discount by requesting a copy of the invoice prior to the date of shipment and by making payment in full within 10 days after the date of the invoice. All payments shall be in U.S. Dollars unless otherwise agreed in writing. Payments may be made by check, money order, wire transfer or credit card (Visa, MasterCard, Discover or American Express). For security purposes, credit card information should not be sent via email to Seller. Buyer shall be responsible for both Buyer's and Seller's wire transfer fees. Buyer will be charged 1.5% per month (but not more than is permitted under applicable law) on overdue accounts. In the event of Buyer's default, Seller shall be entitled to recover accrued late fees and costs of collection, including without limitation attorney's fees. If Buyer fails to make payment for goods delivered as herein provided, or if, in Seller's opinion, a change in Buyer's financial condition or other circumstances has created reasonable concerns as to Buyer's credit worthiness, Seller may at any time limit or cancel the credit of Buyer as to time and amount and may demand payment in cash before delivery of any part of the goods. On any order on which credit is not extended by Seller, shipment or delivery shall be made at Seller's election. Payment must be made for the goods without regard to whether Buyer has made or will make any inspection of the goods.

3. **DEMO/60 DAY EVALUATION.** Demo product(s) may be purchased by Buyer via credit card for a sixty (60) day evaluation period. Demo product(s) may be returned for credit to Buyer of the full purchase price, less shipping and insurance charges, provided that product(s) are returned to Seller prior to the end of the 60-day evaluation period in their original condition, in their original anti-static packaging (with sufficient packaging material), shipping and insurance prepaid, and provided that Buyer shall have requested an R.M.A. number from Seller prior to shipment. If any portion of the product(s) are returned in damaged, altered or modified condition, Buyer shall remain liable for the full invoice amount.

4. **SELLER'S LIMITED WARRANTY.** Seller warrants the products it manufactures to be free from defects in materials and workmanship under normal use and service for two (2) years from the date of shipment by Seller. This warranty shall not apply to malfunctions or failures resulting from misuse, abuse, neglect, alteration, problems with electrical power, usage not in accordance product instructions, acts of nature, improper installation, or repairs made by anyone other than Seller or by Buyer pursuant to Seller's instructions. In the event of malfunction or failure arising from a defect covered by this limited warranty, Seller will repair any products returned to Seller within two (2) years from the date of shipment by Seller, provided that Seller's examination discloses to Seller's satisfaction that the product was defective and covered by this limited warranty. Seller may, at its option, replace the product in lieu of repair. Seller's sole and maximum liability for breach of its warranty herein is limited to the obligation, at Seller's sole discretion, to repair or, at Seller's option, replace or credit Buyer's account, any goods delivered hereunder which are found by Seller to be defective under the terms of this warranty, provided that Buyer follows the return procedures set forth in paragraph 5. In addition, Seller shall have no liability to Buyer to the extent that any failure or malfunction is caused by noncompatibility with other components used by Buyer. In the event that any one or more of the foregoing conditions is not satisfied, Seller shall have no liability under this warranty whatsoever.

Seller's obligation to honor this warranty is contingent upon Seller's receipt of payment in full for the products entitled to this warranty. In the event that the exclusive remedy provided under this warranty is determined upon judicial review to have failed in its essential purpose through no fault of Buyer, the alternate exclusive remedy shall be the refund of the purchase price of the defective goods.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE.

THE FOREGOING STATES THE ENTIRE WARRANTY LIABILITY OF SELLER.

5. **RETURN PROCEDURES.** Prior to returning any product(s) to Seller for warranty service, Buyer must notify Seller by mail or telephone, providing the full details of the failure or malfunction of the product(s). Such notice shall be given within thirty (30) days after Buyer's discovery of the failure or malfunction. Upon receipt of this information, Seller shall provide Buyer with service assistance and/or shipping instructions and a return material authorization (R.M.A.) number. Buyer shall be responsible for returning product(s) to Seller in its original anti-static packaging, shipping prepaid, and insured by Buyer. Buyer shall retain shipping information, including R.M.A. and tracking numbers, which shall serve as Buyer's proof of return. Any product(s) replaced by Seller shall become the property of Seller. All returned products must be received by Seller no later than the last day of the warranty period, or there will be no warranty coverage. If, upon examination of the returned goods, Seller determines that they are not covered by the warranty, Seller reserves the right to charge Buyer for parts and labor at Seller's then current labor rate. Seller will advise Buyer prior to assessing these charges.

6. **BUYER'S WARRANTY.** Acceptance of goods is a warranty by Buyer that Buyer is solvent as of the date of shipment. With respect to goods delivered hereunder, Buyer agrees to accept responsibility for (i) their selection to achieve Buyer's intended results, (ii) their use, (iii) the results obtained therefrom and (iv) the selection of, use of and results obtained from any equipment, programs or services not provided by Seller and used in connection with goods delivered hereunder. Buyer further warrants that it is buying the Product(s) for its own internal use and not for resale as standalone Product(s), unless otherwise agreed between Buyer and Seller under separate written agreement.

7. **RoHS DISCLOSURE.** All products manufactured by Seller that are RoHS compliant will have "RoHS" indicated in the part number. Products that are not RoHS compliant may contain lead or other proscribed materials, or may have some RoHS components installed that may contain matte tin.

8. **NO LICENSE.** Goods or any parts thereof sold hereunder may be protected by intellectual property rights of Seller, including, but not limited to, rights under issued and pending patents, mask work rights, copyright rights, trademark rights and trade secret rights. Neither the sale of goods or any parts thereof hereunder nor the provision by Seller of any supporting or related documentation, technical information or advice shall confer on Buyer any license, express or implied, under any intellectual property rights of Seller covering or related to (i) apparatus or circuits in which the goods or parts thereof may be used; (ii) a process, machine, use or application in connection with which the goods or parts hereof may be used; (iii) the process of their manufacturer; or (iv) a combination in which the goods or parts hereof may be used.

9. **TAXES.** Any tax or government charge by any federal, state or municipal government applicable to the goods sold hereunder now imposed or hereafter becoming effective during the term of any contract made hereunder, except for Seller's franchise taxes and taxes on Seller's net income, shall be added by Seller to the sales price where Seller has the legal obligation to collect or pay same, and shall be paid by Buyer unless Buyer provides Seller with a proper tax-exemption certificate, and references the tax exemption number in its purchase order. Buyer shall pay any duties, levies, taxes, brokerage fees or customs fees imposed in the Buyer's country to shipments made under this contract.

10. **TITLE, DELIVERY AND INSURANCE.** Buyer shall be responsible for all shipping costs, duties, taxes and license fees incurred in the shipment of products to Buyer. Unless Buyer provides to Seller a signed shipping certificate of waiver provided by Seller, all shipments of products to Buyer shall be made with common carriers designated by Seller, fully insured at Buyer's cost, and title and risk of loss shall transfer to Buyer upon delivery to Buyer. Buyers requesting uninsured shipments of products must provide to Seller a signed shipping certificate of waiver provided by Seller. For all uninsured shipments, or for all shipments made with common carriers designated by Buyer, title and risk of loss shall transfer to Buyer upon delivery of goods by Seller to the common carrier. For international shipments, Buyer shall be responsible for obtaining, at its own cost, all licenses and export/import documents required to deliver the product(s) to the country of destination.

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11. **DELIVERY SCHEDULE.** Seller will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's requested delivery schedule but shall not be liable to Buyer for failure to meet any delivery schedule or for the costs of procurement of substitute goods. Any delivery dates provided by Seller represent Seller's best estimate of the time at which product(s) will be shipped from the factory. Lead times are subject to change based on the availability of parts/raw materials from vendors. For scheduled blanket purchase order(s) received, the first initial scheduled date is the same as the standard lead time. Seller assumes no liability for loss, damage, or consequential or other damages due to delays. In the event of any delay, Seller shall have such additional time within which to perform its obligations under the purchase order as may be reasonably necessary under the circumstances; and Seller shall also have the right, to the extent necessary in Seller's reasonable judgment, to apportion fairly among its various customers in such manner as Seller may consider equitable Seller's products then available for delivery. If, as a result of any such contingency, Seller is unable to perform under the purchase order in whole or in part, then, to the extent that it is unable to perform, the purchase order shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the purchase order, if any. Seller reserves the right to make deliveries in installments. Delivery of a quantity that varies from the quantity specified in Buyer's order shall not relieve Buyer of its obligation to accept delivery and pay for the goods ordered. Delays or changes in schedules due to Buyer directed actions are subject to price adjustments.

12. **CANCELLATIONS, CHANGES.** Should Buyer cancel, reschedule or reconfigure its order, Buyer shall be liable to Seller for reasonable additional charges which shall include, but not be limited to, all costs and expenses incurred by Seller in connection with procuring and filing, rescheduling or reconfiguring Seller's order. Without in any way being deemed to grant Buyer any right of cancellation or return, in the event that Seller, in Seller's sole discretion, shall agree to accept a cancellation and/or a return of any products sold, such cancellation and/or return shall be subject to a 15% restocking fee due and payable to Seller, in addition to the additional charges described above. Notwithstanding the foregoing to the contrary, Buyer shall have no right to cancel orders for, or to return to Seller, modified or custom goods.

13. **FORCE MAJEURE.** Seller shall not be liable for delay in performance or failure to perform in whole or in part the terms of this Agreement due to causes beyond the reasonable control of Seller, including, without limitation, strike, labor disputes, shortages of material, war, riot or civil commotion, acts of the public enemy, insurrection, sabotage, or fire, flood or other acts of nature.

14. **ASSIGNS.** Any contract made hereunder is binding upon and shall inure to the benefit of the successors and assigns of the entire business and good will of either Seller or Buyer, or of that part of the business of either used in the performance of such contract, but is not otherwise assignable. Seller may subcontract any part of the work or services to be provided hereunder as Seller deems necessary. Buyer affirms that there exist no third party beneficiaries to Buyer's rights hereunder unless Buyer specifically identifies such beneficiaries on the face of Buyer's order or Buyer's acceptance of Seller's quotation.

15. **MODIFICATION OF GENERAL TERMS AND CONDITIONS.** No addition to or modification of any of the provisions herein or upon the face or reverse of any order shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller.

16. **GOVERNING LAW, JURISDICTION AND VENUE.** This Agreement is governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. The sole jurisdiction and venue for actions related to the subject matter hereof is the state and U.S. federal courts in the State of California, located in Contra Costa County, California, U.S.A.

17. **USE OF SELLER'S GOODS IN LIFE SUPPORT, NUCLEAR AND CERTAIN OTHER APPLICATIONS.** Goods sold by Seller are specifically manufactured for industrial control systems, and are not designed, intended or authorized for use in life support, life sustaining, nuclear or other applications, including, but not limited to, transportation operating systems, aircraft, missiles, and aerospace, in which the failure of such goods could reasonably be expected to result in personal injury, loss of life or severe property or environmental damage. Buyer acknowledges that use of Seller's goods in such product applications is understood to be fully at the risk of Buyer and that Buyer is responsible for verification and validation of the suitability of Seller's goods in such application. Buyer agrees that Seller is not liable, in whole or in part, for any claim or damage arising from use in such applications. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, damages losses, costs, expenses and liabilities arising out of or in connection with such use.

18. **LIMITATION OF LIABILITY.** THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT SELLER'S LIABILITY HEREUNDER.

EXCEPT FOR BODILY INJURY OR DEATH OF A PERSON, UNDER NO CIRCUMSTANCES WILL SELLER, ITS EMPLOYEES, OFFICERS OR DIRECTORS, AGENTS, SUCCESSORS OR ASSIGNS BE LIABLE TO ANYONE UNDER ANY PRODUCT ORDER, SCHEDULE, OR THESE TERMS AND CONDITIONS, PURSUANT TO ANY THEORY BASED ON CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER OR NOT FORESEEABLE OR FORESEEN, FOR: (A) BUSINESS INTERRUPTION COSTS, COST OF REWORK, RETESTING, PROCUREMENT OF SUBSTITUTE GOODS, REMOVAL AND REINSTALLATION OF GOODS; OR (B) ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LITIGATION COSTS, LOSS OF DATA, PRODUCTION OR PROFIT, GOODWILL, LOSS OF REVENUE, OR LOSS OF UNITS; REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER THERE IS A TOTAL AND FUNDAMENTAL BREACH OF THIS AGREEMENT, OR WHETHER ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

SELLER'S LIABILITY FOR ANY CLAIMS SHALL NOT EXCEED THE AMOUNT PAID OR PREPAID ON ACCOUNT BY BUYER FOR THE GOODS GIVING RISE TO SUCH CLAIMS. BUYER SHALL BE DEEMED TO ASSUME ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR MISUSE OF THE GOODS BY BUYER, ITS EMPLOYEES, CUSTOMERS AND OTHERS.

SELLER SHALL NOT BE LIABLE FOR AND BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY GOODS BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS.

19. **RELATIONSHIP OF PARTIES.** Seller and Buyer expressly understand and agree that Buyer is an independent contractor in the performance of each and every part of this order, is solely responsible for all of its employees, agents, and will indemnify Seller from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever that may arise on account of Buyer's activities or those of its employees or agents (including but not limited to direct and indirect distributors or subdistributors), including without limitation unauthorized representations or warranties (or failing to effectively disclaim all warranties and liabilities on behalf of Seller to the same extent as disclaimed herein) to its customers.

20. **BASIS OF BARGAIN.** EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS HEREIN ARE MATERIAL, BARGAINED FOR BASES OF ANY ORDER OR CONTRACT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER ANY ORDER OR CONTRACT AND IN THE DECISION BY EACH PARTY TO ENTER INTO SUCH ORDER OR CONTRACT.

21. **PROPRIETARY DATA.** Buyer agrees not to use or disclose drawings, specifications, technical information or other data furnished by Seller and identified by Seller as confidential or proprietary data without the prior written consent of Seller. Buyer agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of Seller, regardless of whether any such improvement or modification was the creation of Buyer. Buyer further agrees to use all appropriate copyright and proprietary notices on all goods delivered hereunder regardless of their intended use. Buyer recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of the terms of this provision.

22. **TOOLING.** Unless otherwise expressly agreed in writing, Seller retains rights and title to and possession of any tooling, drawings, mask sets, tapes, fixtures, original documentation and intellectual property used in the furnishing of goods.

23. **GENERAL.** In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of Buyer's property, Buyer's insolvency, or any voluntary or involuntary petition in bankruptcy by or against Buyer, Seller may terminate any order without further obligation or liability of Seller to Buyer.

In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.