

ULTRA ELECTRONICS

EMS DEVELOPMENT CORPORATION

GENERAL TERMS AND CONDITIONS OF SALE

1. **AGREEMENT:** Any of the terms and provisions of Buyer's order which are inconsistent with the terms and provisions hereof shall not be binding on EMS and shall not be considered applicable to the sale of the products mentioned herein. Unless Buyer notifies EMS in writing to the contrary before placing an order, acceptance by Buyer of these terms and conditions shall be inferred and, the shipment by EMS of the products covered hereby shall be deemed to be subject to the terms and conditions hereof. No modification hereof shall be valid unless expressly accepted in writing by an authorized representative of EMS.

2. **PRICES:** Prices in the order are fixed and include the cost of commercial packaging. The prices are based on the corresponding and relative EMS quote that must be referenced on any order. Unless otherwise specified on the order, prices are for the specific quantity stated and do not include taxes or charges for transportation, engineering documentation, special packaging, marking or testing.

3. **MINIMUM ORDER:** Unless otherwise specified, a minimum value of one thousand (\$1,000) dollars will be required for EMS to process an order. All repair orders are subject to an evaluation charge that is funded by Buyer and upon submission of EMS evaluation a repair charge will be provided in order for EMS to process a repair order.

4. **QUANTITY DISCOUNTS:** When quantity price discounts are quoted, they are computed separately for each type of product or equipment, and are based on the quantity of each type ordered at any one time for immediate delivery. If any order is reduced or canceled, all prices shall be reviewed and adjustments shall be mutually agreed to, if applicable, for the uncanceled quantity. Cancellation of any orders can be made only with EMS's written consent thereto and upon such terms as will satisfy all costs incurred by EMS and its proportionate profit on work completed.

5. **ORDER SCHEDULING:** Orders are to be scheduled for delivery AS QUOTED, unless otherwise agreed upon or negotiated in writing. If not specifically covered under written contract, any deliveries scheduled beyond 12 months will be subject to price escalation as determined by EMS.

6. **QUALITY LEVELS:** Prices are based on quality levels commensurate with normal processing. If a different quality level is required, Buyer must specify requirements and pay any additional costs that may be applicable.

7. **TAXES:** The prices quoted by EMS do not include sales, use, excise or other similar taxes. The Buyer shall pay, in addition to the prices quoted, the amount of any Federal, State, City, or other tax, import or export duty, tariff or customs charge levied by any jurisdiction either inside or outside the United States which is applicable to the sale of goods or performance of services by EMS or in lieu thereof the Buyer shall supply EMS with an appropriate tax exemption certificate.

8. **TERMS:** Unless otherwise stated, payment terms are net 30 days from date of invoice, subject to credit approval by EMS. EMS reserves the right to require payment in advance, C.O.D. or otherwise modify credit terms either prior to, or after order acceptance if, for any reason, Buyer's credit is or becomes objectionable to EMS. Pending correction of any objectionable credit situation, EMS may withhold shipments without incurring any liability to Buyer. When partial shipments are made, payments therefore shall become due in accordance with the payment terms of the invoice. A service charge of 1½% per month on the unpaid balance shall be imposed on all accounts not paid when due.

9. **SHIPMENT:** All shipments will be made F.O.B. Origin from EMS factory unless otherwise specified. In the absence of specific instructions, EMS will select the carrier. Title to the material shall pass to the Buyer upon delivery by EMS to the carrier or delivery service. Buyer is also held liable for any import/export duties imposed by the carrier and customs department of the ultimate destination. All Export shipments shall be per the INCOTERMS EXW.

10. **DELIVERY:** EMS acknowledged shipping dates are approximate. If Buyer's order does not cite desired delivery date(s) and/or does not expressly prohibit delivery in advance of schedule date(s), Buyer agrees that immediate delivery is acceptable. If conditions arise which prevent compliance with delivery schedules that are in whole or in part beyond the control of EMS, EMS shall not be liable for any damages of any type, including but not limited to general damages, special damages, consequential damages, or any other types of damages, for any delay in delivery, or for failure to give notice of delay, and such delay shall not constitute grounds for cancellation.

11. **FORCE MAJEURE:** EMS shall not be liable for any failure to deliver, failure to give notice of delay, or delay in the delivery of any goods or service due to a force majeure event, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labor disputes, governmental actions, or inability to obtain materials, labor, components, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event EMS's production is curtailed for any of the above reasons, EMS may allocate its production among its various customers in a commercially fair and reasonable manner.

12. **INSPECTION AND ACCEPTANCE:** Buyer must notify EMS in writing within fourteen (14) days from date of shipment of any products that Buyer is rejecting, and the reason (s) why the products are being rejected. If written notification is not received by EMS within fourteen (14) days of shipment, products will be deemed to have been accepted by Buyer.

13. PRODUCT WARRANTY:

A. **Warranty-** EMS warrants that at the time of shipment the products manufactured by EMS and sold hereunder will be free from defects in material and workmanship, and will conform to the specifications furnished by or approved by EMS.

(1) If any defect within this warranty appears, Buyer shall notify EMS immediately.

(2) EMS agrees to repair or furnish a replacement for any product which, within one year from the date of shipment by EMS shall, upon test and examination by EMS, prove defective based upon the above specified warranty. EMS will not be responsible for installation or disassembly, or any costs related to installation or disassembly of products shipped to Buyer that are proven to be defective under this warranty clause.

(3) No product will be accepted for return or replacement without written authorization of EMS. Upon such authorization, and in accordance with instructions by EMS, the product will be returned shipping and all other charges prepaid by Buyer. Replacements made under this warranty will be shipped prepaid.

B. Warranty Exclusions

(1) THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS. EMS EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, THAT MAY ARISE UNDER THE LAW.

(2) If the Buyer purchases units or components from any supplier other than EMS, the Buyer shall bear only the warranty given by the manufacturer of that product, and EMS assumes no responsibility for the integration of its product with any other product.

(3) EMS WILL NOT BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOSS, DAMAGES, OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF THE PRODUCTS OR ANY INABILITY TO USE THEM EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT OR MATERIAL OR FROM ANY OTHER CAUSE.

(4) The warranty does not extend to any product manufactured by EMS which has been subjected to misuse, neglect, accident, improper installation or to use in violation of instructions furnished by EMS.

(5) The warranty does not extend to or apply to any unit which has been repaired or altered at any place other than at EMS's factory or by persons not expressly approved by EMS.

14. PATENT INDEMNITY: To the extent that it delivered hereunder are manufactured in accordance with designs furnished by Buyer, Buyer agrees to indemnify EMS and hold EMS harmless from all legal expenses which may be incurred as well as all damages and costs which may finally be assessed against EMS in any action for infringement of any United States Letters Patent by such it delivered hereunder.

EMS agrees promptly to inform the Buyer of any claim for liability made against EMS with respect to such it and EMS agrees to cooperate with the Buyer in every way reasonably available to facilitate the defense against any such claim.

15. MODIFICATIONS: Unless otherwise agreed upon between Buyer and EMS, EMS reserves the right to modify product specifications of products ordered by the Buyer herein providing that the modification will not substantially and materially affect the product material, form, fit, or function.

16. TOOLING: Unless otherwise expressly provided, EMS shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of this order.

17. GOVERNING LAWS: The validity, performance and construction of these terms and conditions and all sales hereunder shall be governed by the laws of the State of New York.

18. DISPUTE RESOLUTION: All disputes arising out of or in connection with an order placed by Buyer that is subject to these Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The Buyer and EMS agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute. The seat and place of an arbitration shall be New York City.

18. LIMITATION OF LIABILITY: EMS will not be liable for any loss, damage, cost of repair, incidental or special or consequential damages of any kind, whether or not based upon express warranty or implied warranty (except for the obligations assumed by EMS under the Product Warranty Clause), contract, negligence, any other tort, or strict liability arising in connection with a claim or putative claim in connection with an order by Buyer that is subject to these Terms and Conditions. In no event will EMS be liable to Buyer for any amount in excess of the purchase price of the product under any circumstance.

19. SUPPLEMENTAL CLAUSES FOR EXPORT ORDERS:

A. Currency – The prices quoted herein are payable in U.S. dollars.

B. License and Permit Requirements-

(1) EMS will secure all export licenses and permits required by the United States Government, except in those cases where the Buyer already holds a valid export license or agrees to obtain one. When EMS secures the license application, the Buyer will furnish reasonable cooperation in providing the required information. Unless otherwise agreed upon, if such licenses and permits are not paid for by Buyer, such payments will be added to the contract price.

(2) Buyer will secure all licenses and permits required by the foreign government and EMS will furnish reasonable cooperation in acquiring such licenses and permits. The delivery schedule is contingent upon securing all necessary licenses and permits.

(3) Failure to obtain a required license or permit in sufficient time to permit delivery with the time set forth in the contract and without fault or negligence of the contracting parties, shall necessitate an adjustment in the delivery schedule.