

Terms and Conditions of Sale – North America

I. Definitions

In this document the following words shall have the following meanings:

1. "Buyer" means the organisation or person who buys Goods from Seller or is identified on Seller's proposals, order acknowledgements and invoices;
2. "Goods" means the articles to be supplied to the Buyer by the Seller;
3. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
4. "Seller" means MRS Electronic, Inc., 6680 Poe Ave, Dayton, OH 45414.

II. General

1. These Terms and Conditions shall apply to all sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing. In particular, Seller hereby objects to any contrary, different or additional terms or conditions which may now, or in the future, appear on buyer's purchase order or other forms, or any alterations in the terms and conditions of this document, unless expressly agreed to in writing by Seller. Any reference to Buyer's order or other communication is for convenience only and not an incorporation of the terms or conditions thereof unless expressly stated.
2. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
3. This document or any other acknowledgment or confirmation by Seller shall not constitute an acceptance of Buyer's offer, but rather shall be deemed a counter offer.
4. If Seller's terms are not acceptable, Buyer shall immediately notify Seller of its objections in writing. Buyer's failure to object, and its delivery of an acknowledgment or acceptance of the Goods, whichever occurs first, shall constitute Buyer's consent to the terms hereof.

III. Price and Payment

1. Prices, payment terms, and dates of delivery stated or referenced in Seller's quotations or offers are for informational purposes only and shall not be binding to Seller unless and until Seller has confirmed in writing its acceptance of an order placed by Buyer in accordance with the quotation.



6680 Poe Avenue Suite 100
Dayton, OH 45414



937.522.0800



www.mrs-electronics.com

2. Prices and specifications are subject to change. All prices are U.S. prices, Prices outside the U.S. are 10% above list, F.O.B.
3. Unless expressly stated in writing, prices quoted do not include any additional costs, including, but not limited to, special packaging requirements, carriage and delivery costs, insurance, taxes, and costs associated with the importation/exportation of the Goods, which are the sole responsibility and expense of Buyer.
4. Unless expressly stated otherwise in the proposal or order acknowledgement, pricing is based on a firm commitment to the stated quantities of Goods. Any subsequent purchase order must include a binding commitment to the quantity shown in order to receive that price, and cannot be based on "anticipated" usage. Quotations or offers terminate if not accepted by the Buyer within sixty (60) days after issue date.
5. Payment is to be made in U.S dollars, with all associated bank transaction charges paid by Buyer. Buyer's obligation to pay does not cease until the full contract price has been remitted to and is at the free disposal of Seller. Payments shall be made as stipulated without any deductions, including but not limited to, deductions for discounts, expenses or taxes of any kind, or for any alleged damages or claims arising under this agreement or any other agreement unless expressly agreed to in writing by Seller.
6. Seller reserves the right, prior to making any shipments, to require from Buyer satisfactory security for performance of Buyer's obligations.
7. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
8. Where credit is offered payment of the price and any other applicable costs shall be due within 30 days from the invoice date supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered payment will be required before release of goods by the Seller.
9. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2 per cent per annum above Libor Rate.
10. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - a. require payment in advance of delivery in relation to any Goods not previously delivered;
 - b. refuse to make delivery of any undelivered Goods or cancel the undelivered balance of Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery



IV. Description

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

V. Sample

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

VI. Delivery

1. Buyer shall notify Seller in complete detail as to shipping and delivery dates and places. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
2. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then Seller shall have the right to designate the method and route of shipment, freight collect, and to insure, at Buyer's expense with an insurer selected by Seller, the full value of the Goods so shipped. Seller may, at its discretion, deliver the Goods in one or more installments. If Goods that are ready for shipment are to be kept back on instructions of Buyer Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense and bear the risk associated with such storage.
3. Delivery shall also be delayed if Buyer fails to timely perform its obligations under the agreement or if Buyer fails to submit or later modifies information necessary for the manufacture of the Goods.
4. Delay in delivery does not entitle Buyer to cancel the agreement or to claim damages directly or indirectly attributable to such delay unless: (a) Buyer establishes that the delay was within the sole control and due to the fault of Seller, (b) Buyer suffered damages as a result of such delay, and (c) Seller has expressly agreed in writing.

VII. Inspection of Goods

Buyer, its agent, or recipient of the Goods shall inspect the Goods promptly upon receipt. Buyer's right of rejection or revocation of acceptance are waived if

1. Buyer, its agent or recipient of the Goods, fails to give Seller notice of any claim within thirty (30) days after tender of delivery of the Goods, or



2. Buyer, its agent or recipient of the Goods, has used the Goods or engaged into any other activity inconsistent with rejection or revocation of acceptance (except for reasonable tests and inspection quantities).

Buyer's sole and exclusive remedy in cases of delivery of defective Goods is governed by the warranty provision of this agreement.

VIII. Risk

The Goods shall be shipped F.O.B. Seller's plant. Regardless of whether Seller assumes any of the abovementioned costs, all risk of damage, loss or theft shall be borne by Buyer.

IX. Title

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

X. Order Changes and Return of Goods

1. Should the Buyer request changes to the purchase order, including, but not limited to, design changes, packaging changes, quality assurance changes, reduction in quantity, or an extension of the agreed upon delivery time or schedule, Seller reserves the rights to increase the price of Goods and services to reflect any subsequent increase in the cost of materials or labor in the manufacture or delivery of the Goods. In addition, Buyer is obligated to take delivery of, and make payment for, all excess on-hand Seller inventory and supplier-held inventory to which Seller becomes obligated, when acting in reliance on Buyer's request, even if that inventory may include standard parts that may be used elsewhere by the Seller or the Seller's suppliers.
2. All goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or used by the Buyer, unless otherwise agreed, in which case the following terms apply.
 - a. Any returns must be authorised in writing by the Seller before Products can be returned or any credit will be given.
 - b. Where the Seller agrees to accept the return of Goods that are not damaged the Buyer will be responsible for shipping cost, a restocking fee, and Buyer will also ensure that Goods are properly packaged to avoid any damage in transit. The Seller will not be obliged to accept any goods that were opened or are damaged in any way. The Seller will only accept returns that appear in the Sellers current products list.
 - c. 90% credit (subject to a \$50 restocking fee) of amounts due or paid in will only be given for Goods that are in saleable condition.
3. All orders accepted by MRS Electronic Inc. are to be considered Non-Cancellable and Non-Returnable (NCNR), unless specifically stated in writing by MRS Electronic Inc. In no case shall this policy be superseded by buyer's Terms and Conditions.



XI. Limitation of Liability

1. Seller warrants that the Goods are free from defects in material and workmanship for a period of 12 months from the date of shipment.
2. Buyer needs to contact Seller to receive a Return Merchandise Authorization (RMA) number prior to returning any product to Seller. The Buyer is responsible for shipping to Seller.
3. Seller expressly disclaims any damages resulting from inaccurate or incomplete information provided by Buyer. Goods are not warranted against corrosion or incompatibility with the operating environment, including but not limited to, chemical attack or operation in conjunction with other components of Buyer's system, unless otherwise agreed in writing by Seller.
4. Seller's warranty is F.O.B. Seller's plant, and expressly excludes any costs incurred by the Buyer for removal or installation of Goods. Seller shall be given reasonable opportunity to inspect any alleged defective Goods.

Any defect in materials or workmanship determined by Seller to be attributable to Buyer alteration, modification, negligence, or misuse is not covered by this warranty. Provided that inspection by Seller verifies the claimed defects, Seller shall, at its option,

- a. repair or replace the defective Goods or portions thereof. In this case Seller will reship only to destinations in the U.S. and for products within warranty, or
 - b. refund or credit all or a portion of the purchase price, provided that the Buyer returns to Seller the defective goods in accordance with Seller's instructions.
5. Buyer further agrees that any accommodation to Buyer by Seller, whether for sales policy reasons or otherwise, shall not be taken to establish any liability of Seller or any contract term inconsistent herewith. In no case shall the cost of warranty remedies exceed the original purchase price of the Goods.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING ATTORNEYS' FEES), ARISING OUT OF THE SALE OF GOODS TO BUYER OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF BUSINESS, GOODWILL, OR PROFITS, AND CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR SELLER, AND BUYER HEREBY WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS ANY SUCH CLAIMS AGAINST SELLER.



XII. Intellectual Property Rights

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

XIII. Force Majeure

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lockouts, labor disputes, freight embargoes, transportation delays, shortage of labor, inability to secure fuel, materials, supplies, equipment, or power, accidents, war, fire, floods, breakdown of plant or machinery or unavailability of raw materials from a natural source of supply, governmental import, export or transit suspensions or restrictions, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

XIV. Security Interest

Buyer hereby grants Seller a security interest in the Goods to secure any unpaid balance of the price and all other obligations of Buyer to Seller however arising. Buyer authorizes Seller to file all necessary financing statements and similar documents required to perfect the security interest granted herein and irrevocably grants Seller a power of attorney to execute any documents on behalf of Buyer relating thereto.

XV. Indemnification by Buyer

Buyer shall defend or settle, at its own expense, any and all claims made against Seller, its officers, directors, agents, or employees, and shall indemnify and hold the same harmless from any and all loss, expense, damage, liability claims or demands, either at law or in equity, that the Goods sold pursuant to this agreement constitute an infringement of any patent, copyright, trademark, unfair competition or other similar law (the "Infringement Claim") to the extent that the Infringement Claim arises from the design or manufacture of the Goods pursuant to Buyer's design, instructions, or specifications.

XVI. Default

If Buyer defaults in performing any of its obligations to Seller under this agreement, or any other agreements, Seller may, at its option and without incurring any liability thereby, elect to cancel this agreement and/or to cancel any or all other agreements with Buyer, and pursue all available legal and equitable remedies.



XVII. Insolvency

If Buyer shall be or become insolvent or cease doing business or be the subject of any proceedings under any bankruptcy, insolvency, or reorganization statute or law, such act shall, at the option of Seller, be deemed a default under this agreement, and Seller may elect to cease performing and cancel this agreement with respect to any Goods not delivered or received prior to the election, and pursue all available legal and equitable remedies.

XVIII. Governing Law, Jurisdiction

This contract shall be construed and governed by the laws of the State of Ohio, including Article 2 of the Uniform Commercial Code as codified in Ohio Revised Code Chapter 1302, regardless of the laws that might be applicable under principles of conflicts of law. Any action arising from or related to this contract shall be instituted and litigated in any federal or state court located in Montgomery County, Ohio. The parties hereby irrevocably consent to the jurisdiction of the courts of Montgomery County, Ohio.

XIX. Arbitration

Any 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.

XX. Notices

Any required notices shall be delivered by hand or sent by courier, facsimile, express mail (or its equivalent), or postage prepaid certified or registered mail at the addresses provided on the face hereof, and shall be deemed effective on the earlier of five (5) business days after having been sent or the date of actual receipt. Either party may change its address for notice by giving written notice to the other party of the change.



XXI. Miscellaneous

These terms and conditions set forth the entire understanding and agreement between the parties. No provisions shall be waived, changed, terminated, or rescinded, except by a written agreement signed by both parties. Any waiver of any breach of any provision of this agreement shall not constitute a waiver of any similar or dissimilar provision, nor shall it constitute an amendment or modification of this agreement. If any provision of this agreement shall be held to be unenforceable or inapplicable, such holding shall not affect the enforceability of any other provision of this agreement. No contract to purchase Goods from Seller may be assigned by Buyer without the prior written consent of Seller. The provisions of this agreement otherwise shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.



6680 Poe Avenue Suite 100
Dayton, OH 45414

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