

## TERMS AND CONDITIONS OF SALE

All purchase orders (hereinafter "Orders") accepted by Meritek Electronics Corp. and its subsidiaries (individually hereinafter "Supplier") are on the express condition that these Terms and Conditions of Sale shall constitute the complete and exclusive written expression of the terms of the agreement between the parties. Any provisions or conditions of Buyer's Orders which are in any manner inconsistent with or in addition to these terms and conditions (except additional provisions specifying quantity and shipping instructions) are hereby rejected, and shall not be binding on Supplier.

- 1. Price and Taxes:** Prices are subject to change in response to Supplier's cost increases or if a price has been quoted in error, whereupon, Customer may cancel the undelivered portion of any affected Order by delivering written notice to Supplier prior to the shipment thereof and within 10 days of its receipt of notice of the price increase. Prices do not include Federal, state or local taxes, now or hereafter enacted, applicable to the Goods sold, such tax or taxes will be added by Supplier to the sales prices where Supplier has the legal obligation to collect same, and will be paid by Buyer unless Buyer provides Supplier with a proper tax-exemption certificate in advance of acceptance of Orders by Supplier.
- 2. Terms and Method of Payment:** Where Supplier has extended credit to Buyer; terms of payment shall be shown on the invoice. The amount of credit may be changed or credit withdrawn by Supplier at any time. On any Order on which credit is not extended by Supplier, shipment or delivery shall be made at Supplier's election. Cash with Order (in whole or part), C.O.D. or Sight Draft attached to Bill of lading or other shipping documents, with all costs of collection to be borne by Buyer. Pro Rate payments are due from Buyer as shipments are made by Supplier. If shipments are delayed by Buyer, payments are due from date when Supplier is prepared to make such shipments. Standard payment terms are Net, 30 days unless otherwise agreed to, in writing, by Supplier and Buyer.
- 3. Title and Delivery:** The Goods shall be delivered when ordered by Buyer on reasonable notice to Supplier and contingent to product standard lead time, Ex-work Supplier's plant or warehouse facility, and title thereto and liability for loss or damage in transit or thereafter shall pass to Buyer upon Supplier's delivery of the Goods to a common carrier for shipment to Buyer. Shipping dates are approximate and Supplier assumes no liability for loss, damage, or consequential damages due to delays for any reason. In no way shall Supplier be bound to a firm shipment date, regardless of the wording in Buyer's Orders, unless expressly agreed to in writing by Supplier.
- 4. Contingencies:** Supplier shall not be responsible for any failure to perform due to causes beyond its control. These causes shall include but not be restricted to; fire, storm, flood, earthquake, explosion, accident, acts of public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor shortage, transportation embargoes, or failure or delays in transportation, inability to secure raw materials or machinery for the manufacture of its Goods, acts of God, acts of Federal Government or any agency thereof, acts of any state or local government or agency thereof, and judicial action. Supplier reserves the right to cancel without liability any Order, the shipment of which is or may be delayed for more than 30 days by reason of any such cause. Supplier reserves the right to allocate in its sole discretion among customers or potential customers, or defer or delay the shipment of, any Goods which is in short supply.
- 5. Cancellation/Rescheduling:** In the event of cancellation or rescheduling of all or any part of an Order by Buyer, Supplier shall be entitled to be paid cancellation and/or rescheduling charges, as reasonably determined by Supplier, except as otherwise expressly agreed in writing by Supplier. Such charges shall include all expenses, liabilities, and obligations incurred with respect to manufacturing the Goods, importing/storing the Goods, plus an allowance for a reasonable profit. In the event that Non-Cancelable, Non-Returnable (NCNR) is explicitly declared by Supplier pursuant to Buyer's Order, in such case cancellation and/or rescheduling will not be allowed.
- 6. Warranty and Claims:** Supplier warrants to Buyer that all Goods furnished by Supplier pursuant to Buyer's Orders at the time of shipment shall be compliant with Supplier's specifications in effect at the time of manufacture, and for a period of One (1) year from the date of shipment to Buyer under normal handling, storage and use, shall be free from defects in design, materials and workmanship. The liability of Supplier under this warranty is strictly limited to refunding of Buyer's purchase price, replacing or repairing any Goods which are returned during such period provided that (a) Supplier is notified in writing within 60 days of receipt of Goods. (b) the defective unit(s) is(are) returned to Supplier upon receiving written authorization for return from Supplier, with transportation charges prepaid by Buyer, and (c) Supplier's examination of such unit shall disclose to its satisfaction that such defects have not been caused by misuse, neglect, improper installation, repair alteration or accident.
- 7. Limitations:** Supplier's express warranty set forth in Subsection 5 is the only warranty with respect to Goods furnished pursuant to Buyer's Orders. SUPPLIER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN OR STATUTORY, OR EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR

ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR LOSS OF BUSINESS PROFITS, WHETHER OR NOT BUYER HAS INFORMED SUPPLIER OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. SUPPLIER'S TOTAL LIABILITY FOR NON-CONFORMING GOODS SHALL NOT EXCEED THE COST OF THE REMEDY SELECTED BY SUPPLIER AT ITS OPTION PURSUANT TO SUBSECTION 5 ABOVE.

8. **Non-Approved Applications:** Buyer and end-users are ultimately responsible for selecting and testing Supplier's Goods for their particular applications. The limitations on Supplier's responsibility for use of its Goods are set forth in Subsection 5 above. Unless specifically otherwise agreed in writing by Supplier, Buyer acknowledges that Goods sold by Supplier are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage.
9. **Non-Waiver of Default:** Each shipment made under any Order shall be treated as a separate transaction, but in the event of any default by Buyer, Supplier may decline to make further shipments without in any way affecting its rights under such Order. If, despite any default by Buyer, Supplier elects to continue to make shipment, its action shall not constitute a waiver of any default by Buyer or in any way affect Supplier's legal remedies for any such default.
10. **Termination:** Supplier may cancel any Order if in Supplier's judgment, Buyer's financial condition does not justify the terms of payment specified, in which case Supplier may cancel any unfilled Order unless Buyer shall, upon written notice, immediately pay for all Goods delivered or shall pay in advance for all Goods ordered but not delivered or both, at Supplier's option.
11. **Arbitration:** Any controversy or claim arising out of or relating to Orders shall be settled by arbitration in accordance with the rules then prevailing of the American Arbitration Association and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Unless the parties otherwise agree in writing such arbitration will be conducted in Los Angeles, California.
12. **Law:** The validity performance and construction of these terms and conditions and any sale made hereunder shall be governed by the laws of the State of California.
13. **Assigns:** Any contract made hereunder shall be binding upon and inure to the benefit of the successors and assigns of the entire business upon and goodwill of either Supplier or Buyer or of that part of the business of either used in the performance of such contract.

**Modification and Complete Contract:** This document contains the entire understanding and agreement of the parties concerning the purchase and sale of the Goods provided by Supplier. No addition to or modification of any of the provisions upon the face or reverse of this document shall be binding upon Supplier unless made in writing and signed by a duly authorized representative of Supplier.