Device Engineering Incorporated - Standard Terms & Conditions of Sale

TERMS & CONDITIONS OF SALE

ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYERS ASSENT TO THE TERMS AND CONDITIONS PRINTED BELOW. IF BUYER OBJECTS TO ANY TERMS BELOW, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION, OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS BELOW. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

GENERAL PROVISIONS

1. Design Control of Product
   As OCM, Device Engineering Incorporated (DEI) maintains complete design control of products. Customer supplied part numbers or specifications are for reference only. DEI's part number and applicable specifications take precedence. Buyer has ultimate responsibility to confirm their part number conforms to DEI products. DEI reserves the right to make changes to products as required.

2. First Article Requirements
   For customers having a first article inspections requirement – DEI meets this requirement by capturing all mechanical and electrical data from initial device builds. The customer must contact DEI for the required data. If the customer requires an AS9102 FAIR form to be completed there will be an additional charge.

3. Title and Delivery
   All shipments of goods shall be delivered F.O.B. Seller's plant, and title and liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

   Seller may deliver goods in installments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

4. Terms and Method of Payment
   Where Seller has extended credit to Buyer, terms of payment shall be net ten (10) for NRE charges and net thirty (30) days from date of invoice for products. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. If the goods are delivered in installments, Buyer shall pay separately for each installment. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If Buyer delays shipments, payments are due from the date when Seller is prepared to make shipments. Goods held for Buyer are at Buyer's risk and expense.

5. Contingencies and Force Majeure
   Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion,
flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and deliveries among seller's customers.

6. **Legal Compliance**
Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgment may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses, which may be required under the applicable laws of the U.S. including the Export Administration Act and regulations promulgated thereunder.

7. **Changes**
Any notice or instruction from the Buyer received subsequent to Seller's acknowledgment, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

8. **Limited Warranty**
THE FOLLOWING IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OBLIGATION ON THE PART OF SELLER.

Seller, except as otherwise hereinafter provided, warrants the goods against faulty workmanship or the use of defective materials, and that such goods will conform to Seller's written specifications, drawings, and other descriptions for a period set forth in the schedule below. These warranties are the only warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller. Seller's warranties shall be for the following periods: eighteen (18) months from the date of shipment or twelve (12) months from the date of resale by Buyer to Buyer's customers, whichever is first to expire. Including Integrated Circuits, ASIC (Application Specific Integrated Circuits) or other Standard Product devices.

Continued use or possession of goods after expiration of the applicable warranty period stated above shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer.

Seller's warranties are herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

9. **Product Application Indemnity**
Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract, against Buyer and/or Seller, including Attorney's fees, expenses and costs, arising out of the application of Seller's products to Buyer's designs and/or products, or Seller's assistance in the application of Seller's products.

10. **Exclusive Remedies**
If the goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this contract with a detailed explanation of any alleged deficiencies, (ii) such goods are returned to Seller, F.O.B. Seller's plant, and (iii) Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If such goods are non-conforming, Seller shall reimburse Buyer for the transportation charges paid by Buyer for such goods. If Seller elects to repair or replace such goods, Seller shall have a reasonable time to make such repairs or replace such goods.

THIS IS THE SELLER'S ONLY LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

11. **Inspection/Acceptance of Product**
Buyer shall notify Seller upon receipt of goods of all discoverable defects, including quantity shortages,
incorrect product, and visible defects no later than thirty (30) days of receipt. Acceptance shall be presumed conclusively to have occurred thirty (30) days following delivery of product to Buyer, unless Buyer has accepted the product prior to that date. Buyer's inspection and/or acceptance tests shall not exceed the inspection and/or test procedures customary in the industry for the goods furnished and is at Buyer's expense.

No return of goods will be accepted by Seller without a Return Material Authorization ("RMA") Number

12. **Patents**

Seller shall defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any goods manufactured and supplied by Seller to Buyer constitute direct infringement of any duly issued United States patent and Seller shall pay all damages and costs finally awarded therein against Buyer, provided that the Seller is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Seller’s expense) necessary to defend or settle said suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification(s), or from a combination with, an addition to, or a modification of the goods after delivery by Seller, or from use of the goods, or any part thereof, in the practice of a process. Seller’s obligations hereunder shall not apply to any infringement occurring after Buyer has received notice of such suit or proceeding alleging the infringement unless Seller has given written permission for such continuing infringement.

If any goods manufactured and supplied by Seller to Buyer shall be held to infringe any United States patent and Buyer shall be enjoined from using the same, Seller will exert its reasonable efforts, at its option and at its expense, (i) to procure for Buyer the right to use such goods free of any liability for patent infringement or (ii) to replace such goods with a non-infringing substitute otherwise complying substantially with all requirements of this contract or (iii) refund the purchase price and the transportation costs of such goods.

**THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

13. **Software**

Software as used herein means goods that are software, including, without limitation, software embedded in Seller goods, standalone software and downloadable software. Customer acknowledges that such software is proprietary, copyrighted and may be protected by patents. All Software is licensed to Buyer, subject to a license agreement, and title to Software remains with the applicable licensor(s). Buyer agrees to be bound by such license agreement in addition to these terms and conditions of sale. Buyer shall not duplicate, disassemble, decompile, reverse engineer, modify, create derivative works, or otherwise change Software or its form except to the extent it is permitted by law. Software incorporated in or packaged with Seller hardware goods shall be used solely by Buyer for the use of the hardware goods as authorized by Seller, and Buyer shall have no other rights with respect to such Software.

14. **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.

15. **Buyer Property**

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.

All materials, including but not limited to special tools and equipment furnished by buyer to seller in
connection with this Order shall remain buyer's property. In addition, all special tools and equipment either: (i) identified as a reimbursable item in the Order, or (ii) specifically acquired for performance of this Order with the cost being fully amortized or otherwise recovered in the price of the supplies to be delivered hereunder, shall, upon such payment, become buyer's property. All of buyer’s property shall be: (iv) used only in filling orders for buyer, (v) kept segregated and clearly marked as buyer’s property, (vi) maintained in good condition, normal wear and tear being accepted, and surrendered to buyer upon demand. Seller shall not be responsible for replacing bailed materials satisfactorily accounted for in the manufacturing and assembly process. (b) While buyer-owned property of whatever kind is in seller's possession or control. Seller shall be responsible for all loss or damage and shall, at its own expense, secure, or maintain extended insurance coverage in an amount sufficient to cover replacement cost.

16. Cancellation, Rescheduling
All requested cancellations to orders for Standard Products and Custom Products are subject to acceptance by Seller. Buyer may terminate this contract in whole, or from time to time, in part, with minimum thirty (30) days before the original Scheduled Date with written notice to Seller. In such event, Buyer may be liable for termination charges which may include (at the sole discretion of DEI): a price adjustment based on the quantity of goods actually delivered and all cost, direct and indirect, incurred and committed for this contract; together with a reasonable allowance for prorated expenses and anticipated profits.

All requested changes to orders are subject to acceptance by Seller. Buyer may request reschedule with minimum thirty (30) days before the original Scheduled Date with written notice to Seller. Reschedule must stay within the quarter in which the shipment was originally scheduled.

17. Applicable Law and Forum
The validity, performance and construction of this contract shall be governed by the laws of the state of Arizona and shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.

18. U.S. Government Contracts
If the goods to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract, and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

19. Modification
This contract constitutes the entire agreement between the parties relating to the sale of the goods described on the face hereof, and no addition or modification of any provision of this contract shall be binding upon seller unless made in writing and signed by a duly authorized representative of seller located at seller’s appropriate order entry location.