

# FUTURE ELECTRONICS HONG KONG TERMS & CONDITIONS OF SALE

These terms and conditions govern the sale of products ("Products") and the Provision of services ("Services") by Future Electronics Inc. and its subsidiaries in the Asia/Pacific region ("Seller"). These terms and conditions ("Conditions") take precedence over Buyer's terms and conditions including any supplemental or conflicting terms and conditions to which notice of objection is hereby given. Acceptance by Buyer is limited to these terms and conditions. Neither Seller's commencement of performance nor delivery shall be deemed or constituted as acceptance of Buyer's supplemental or conflicting terms and conditions. Buyer's acceptance of delivery of the Products/Services from Seller shall be deemed to constitute acceptance of these Conditions.

## 1. Orders

All orders placed by Buyer are subject to acceptance by Seller. Orders may not be cancelled or rescheduled without Seller's written consent. All orders must include delivery dates, quantities, approved vendors and complete description of Products being purchased. Seller may in its sole discretion allocate Product among its Customers. Seller may designate certain Products as non-cancellable, non-returnable ("NCNR") or customer specific ("CS") Products for reasons of obsolescence and/or non-standard character and/or otherwise. Notwithstanding anything to the contrary herein, any order of such Products shall constitute a firm order which is non-cancellable and non-reschedulable, and, except for returns made in accordance with the applicable manufacturer's warranty, the Products are non-returnable for any reason whatsoever, including, without limitation, any force majeure. Any delays by Seller in delivering NCNR or CS Products (i) that are due to manufacturer's lead times or to any cause beyond Seller's reasonable control shall not give rise to liability on the part of Seller, and (ii) shall not affect the binding character of this Agreement nor Buyer's commitments hereunder. Buyer's liability to Seller for NCNR or CS Products shall be the aggregate of the full purchase price of all such Products: (a) already shipped to Buyer, and/or (b) held in Seller's inventory for Buyer, and/or (c) manufactured, in whole or in part, by Future's supplier. Without limiting the generality of the foregoing, any order for cut or broken tape, mini-reels or other customized parts shall be deemed NCNR. Given the special nature of such an order, Seller reserves the right to cancel any such NCNR or CS order within 7 business days following delivery of Seller's order acknowledgement. The sale of NCNR or CS Products may alternatively be subject to the special terms and conditions contained in Seller's Special Product Agreement, which shall prevail and supersede any inconsistent terms and conditions contained herein or elsewhere.

## 2. Prices

(a) The prices of the Products are those specified in Seller's invoice for the relevant Products. Pricing for undelivered Products may be increased in the event of any increase in Seller's costs, change in market conditions or any other causes beyond Seller's reasonable control. Quotations, unless otherwise stated, are valid on day of issue only, thereafter Seller may change them without notice. (b) Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including, but not limited to Goods and Services Tax or Value Added Tax. Buyer agrees to pay these taxes unless the Seller agrees in writing that the sale is exempted. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.

## 3. Payment

(a) Seller's standard terms of payment are net thirty (30) days from the date of invoice unless otherwise specified in writing by Seller. Seller may invoice each shipment separately and each shipment shall be considered a separate and individual contract. Buyer agrees to pay Seller's invoice in full without any deductions or set-off. (b) Time for payment of invoices is of the essence. All late payments shall be charged interest computed on a daily basis from the due date until paid in full. Seller is entitled to receive interest at the rate of one percent (1 %) per month or the maximum rate permitted by law plus reimbursement for costs of debt collection (including reasonable legal fees of Seller and court costs) to collect full payment for Products/Services supplied. (c) Transportation charges from Seller's facility to Buyer's facility shall be paid by Buyer to Seller, in addition to the purchase price of the Products, unless otherwise agreed to in writing by Seller. Seller will select the carrier in the absence of specific instructions by Buyer. (d) Seller reserves the right to establish or change credit or payment terms when, in Seller's sole opinion, Buyer's financial condition or payment record warrants it. If payment is late Seller shall not be obliged to continue performance and or to carry out any further work under the contract for delivery of the Products/Services or on any other contract with the Buyer; and if any of the Buyer's obligations to the Seller are not fulfilled or Buyer fails to pay for Products/Services supplied, Seller may, without prejudice to other remedies available, cancel, suspend or terminate the contract for the relevant Products/Services.

## 4. Delivery

Unless otherwise agreed in writing by Seller all deliveries will be made EXW (Ex Works) Seller's facility or DDU agreed destination (as defined in Incoterms 2000). Delivery will be deemed complete and risk of loss or damage to the Products will pass to Buyer upon delivery to the carrier. Buyer acknowledges that delivery dates provided by Seller are estimates only and Seller shall not be liable for delays in delivery or for failure to perform due to events beyond the reasonable control of Seller nor shall the carrier be deemed an agent of Seller. In the event of delay caused by such event, the date of delivery shall be extended for a period equal to the time lost as a consequence of the delay in delivery without subjecting Seller to any liability or penalty. Time for delivery shall not be of the essence. If the Products perish while in the custody of the carrier, the Seller shall be deemed to have performed its obligations in full. Where the Products/Services are to be delivered in installments each delivery shall constitute a separate contract and failure by Seller to deliver any one or more installments under these Conditions or any claim by Buyer in respect of any installment shall not entitle Buyer to refuse future deliveries. Title in the Products shall not pass to Buyer until such time as full payment for the Products has been received by Seller and until such time, Buyer shall hold the Products as Seller's fiduciary agent or trustee and bailee, and shall keep the Products separate to Buyer's goods and to those of third parties and properly stored, protected, insured and identified as Seller's property, but shall be entitled to resell or use the Products in the ordinary course of Seller's business. Until title in the Products passes to Buyer, Seller can require Buyer to return the Products and, if Buyer fails to do so, immediately on request, Seller may enter Buyer's premises to repossess them. Buyer shall indemnify Seller against liability for damage caused in repossessing Products. Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Products which remain Seller's property, but if Buyer does so, all moneys owing by Buyer to Seller shall forthwith become due and payable. Buyer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by Seller to transfer, create, perfect, preserve, protect and enforce the provisions of this Clause 4.

## 5. Acceptance/Returns

Shipments will be deemed to have been accepted by Buyer upon receipt of the said shipments at Buyer's facility. Buyer shall perform whatever inspection or tests Buyer deems necessary as promptly as possible but in any event within seven days of delivery. Any discrepancy in shipment quantity must be reported to the Seller within seven (7) days of receipt of the Products. In the event of an over-shipment, Buyer shall have the option to return the Products to Seller at Seller's expense or alternatively, Buyer may elect to retain the excess Products (subject to adjustment of the invoice price to account for excess items.) Any return of Products shall be subject to compliance with Seller's Return Merchandise Authorization (RMA) policies and procedures as well as applicable restocking charges. Buyer may obtain details of these from Seller on request. Returned Products must be in the original packaging and conform with minimum package quantity (MPQ) requirements.

## 6. Warranty and Limitation of Liability

(a) Seller warrants to Buyer that on delivery and for a period of 3 months thereafter, Products will conform to the applicable Products specifications issued by the manufacturer of the relevant Products. Seller warrants that so far as it is reasonably able so to do, it will transfer to Buyer the benefit of any transferable warranties given by the relevant manufacturer of the Products (subject always to the terms, conditions and limitations of any such warranty) and any other rights which the Seller may enforce against the manufacturer. Buyer's remedies relating to any claim that Products are defective or not in accordance with the contract for their supply or not in accordance with any express description, representation, condition or warranty implied by law or any other claim in respect of the Products or any workmanship relating thereto shall in all cases be limited to enforcement of the manufacturer's warranty (as mentioned above) and the Seller shall not be liable for damages, compensation, costs, expenses losses of any kind, direct or indirect or consequential and any other remedy which would otherwise be available in law is hereby excluded (save only to the extent that such exclusion is prohibited by the applicable governing law). IT IS BUYER'S OBLIGATION TO REQUEST COPIES OF ANY APPLICABLE MANUFACTURER WARRANTIES AND BUYER SHALL BE DEEMED TO HAVE ACCEPTED SUCH WARRANTIES UPON ACCEPTANCE OF DELIVERY OF THE PRODUCTS. (b) Seller's exclusive obligations with respect to any non-conforming, Products/Services or breach of warranty or condition in relation to quality, fitness for purpose, merchantability or suitability of Products/Services shall be, at Seller's option, to repair or replace the Products, if it is determined to be defective, or to re-perform the Services, or to refund or credit the Buyer the price paid for the relevant Products/Services. (c) THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, GIVEN BY SELLER IN CONNECTION WITH THE PRODUCTS/SERVICES, AND SELLER DISCLAIMS AND EXCLUDES TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER WARRANTIES AND CONDITIONS (WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON

LAW OR OTHERWISE) INCLUDING, BUT NOT LIMITED TO THOSE RELATING TO QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF THIRD PARTY RIGHTS AND LATENT DEFECTS (and subject to the following clauses 6(d) to (k)). (d) Where the Products/Services are sold to a consumer within the meaning of the Unfair Contract Terms Act 1977 the CONSUMER'S STATUTORY RIGHTS UNDER SECTIONS 12-15 OF THE SALE OF GOODS ACT ARE NOT AFFECTED BY THESE CONDITIONS. (e) Replacement Products are warranted as set forth above. Any Products repaired or serviced by Seller are warranted as provided in this Section 6 for the remainder of the warranty period or ninety (90) days after the Products are returned to Buyer, whichever is later (based upon the date that repair or other agreed service is completed). (f) This warranty shall not apply to any Products that have been subject to misuse, improper testing, assembly, mishandling, or which has been operated contrary to current instructions relating to installation, maintenance or operation, or contrary to industry standards relating to acceptable input power. (g) Seller shall have no liability for any copyright, design or patent infringement, which may occur, as a result of the sale of Products to Buyer. Buyer's only remedy or recourse for copyright, design or patent infringement shall be against the manufacturer of the Products. There shall be no remedy or recourse against Seller or the manufacturer to the extent the infringement arises from or is otherwise based upon (i) the manufacturer's or Seller's compliance with the particular requirements of Buyer that differ from the manufacturer's standard specifications for the Products; (ii) modifications or alterations of the Products other than by the manufacturer; or (iii) a combination of the Products with other items not furnished or manufactured by the manufacturer or Seller. (h) SUBJECT TO CLAUSE 6(j) BELOW, SELLER SHALL NOT BE LIABLE TO BUYER BY REASON OF ANY REPRESENTATION (UNLESS FRAUDULENT) OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM OR ANY DUTY AT COMMON LAW OR UNDER AN EXPRESS TERM OF THE AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE (WHETHER FOR LOSS OF PROFIT, TURNOVER, BUSINESS, GOODWILL OR OTHERWISE) COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION WHATSOEVER (WHETHER CAUSED BY SELLER'S NEGLIGENCE OR THAT OF ITS EMPLOYEES OR AGENTS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE PRODUCTS/SERVICES OR THEIR USE OR RESALE BY BUYER AND, (i) SELLER'S ENTIRE LIABILITY UNDER OR IN CONNECTION WITH THE AGREEMENT SHALL NOT EXCEED THE PRICE OF THE PRODUCTS/SERVICES. FORMING THE SUBJECT OF THE BUYER'S CLAIM, (j) PROVIDED ALWAYS THAT NOTHING IN THESE TERMS AND CONDITIONS SHALL OPERATE OR BE CONSTRUED SO AS TO EXCLUDE OR RESTRICT THE LIABILITY OF THE SELLER FOR FRAUD OR DEATH OR PERSONAL INJURY CAUSED BY REASON OF THE NEGLIGENCE OF THE SELLER, ITS EMPLOYEES OR AGENTS. (k) If the Buyer wishes to claim under the foregoing warranties the Buyer must notify the Seller within fourteen (14) days of discovery of any defect and in any event no later than twelve (12) months of the delivery of the relevant Products, otherwise Buyer waives its rights and Seller shall have no liability for any alleged defect. The above warranties are not assignable and Seller cannot accept warranty returns directly or indirectly from Buyer's own customers or from the user of the Products. Nothing herein shall create any privity of contract between the Seller and the Buyer's own customers.

#### **7. Export Control/Use of Products**

Buyer certifies that it will be the recipient of Products to be delivered by Seller. Buyer agrees that the Products are subject to the export and/or import control laws and regulations of various countries (and in particular are/maybe subject to the export control regulations of Hong Kong and/or the USA, as amended) and agrees that the Products/Services will not be used for purposes associated with any chemical, biological, nuclear weapons or missiles capable of delivering such weapons, or in support of any terrorist activity or any other military use, nor will they be re-sold if it is known or suspected that they are intended to be used for such purposes. Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products/Services into the country of destination and for the payment of any duties thereon. Buyer agrees that it will not sell, resell, re-export or ship or otherwise divert, directly or indirectly, any of the Products delivered by Seller and further agrees to comply strictly with all Hong Kong export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. In the ordinary course of the Seller's business, the Seller distributes Products which it purchases from the manufacturer thereof and Seller makes no alterations whatsoever before sale to the Buyer. In so far as it is practicable the Seller maintains the integrity of and sells the Products in the manufacturer's packaging. Buyer agrees that in all cases, the Buyer has knowledge of the origin of the Products and all Buyers orders are placed in that knowledge and at the specific request of the Buyer. In selecting and ordering the Products, Buyer agrees that it is using its own skill and judgment. Buyer agrees that Products sold by Seller are not designed by the manufacturer for use in life support, life sustaining or nuclear applications or in devices or items intended for surgical implant into the body, or other applications or products for which a product failure may result in personal injury, death, or catastrophic property damage. If Buyer sells or otherwise uses the Products for such applications, or breaches its obligations relating to export restrictions, use or misuse of the Products in the manner referred to in clause 6(f) above, the Buyer agrees that it does so completely at its own risk and irrevocably undertakes to indemnify Seller and its suppliers/manufacturers for any damages resulting from such sale or use or

misuse, including Seller's reasonable legal fees and expenses.

#### **8. Technical Assistance or Advice**

Any technical assistance or advice offered by Seller regarding use of any Products/Service or provided in connection with Buyer's purchases is given free of charge and as an accommodation to Buyer. Seller shall not be held liable for the content or Buyer's use of such technical assistance or advice nor shall any statement made by any of Seller's representatives in connection with the Products/Services constitute a representation or warranty, express or implied. Seller's employees or agents are not authorized to make any representations regarding any Products/Services unless confirmed by Seller in writing and signed by a Director of Seller. Buyer acknowledges that it does not rely on any such representations that are not so confirmed. Any typographical or other error or omission in any sales literature, pricing, invoice or quote is subject to correction without any liability on the Seller's part.

#### **9. Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties agree to submit to the exclusive jurisdiction of Hong Kong courts.

#### **10. Force Majeure**

Seller shall not be liable for its inability to secure sufficient quantities of any Products or failure to perform or to deliver Products/Services due to causes beyond Seller's reasonable control including, but not limited to, Acts of God, natural or artificial disaster, riot, war, strike, delay by carrier, or shortage of Products, which shall be considered as circumstances of force majeure excusing Seller from performance and barring remedies for non-performance. If force majeure circumstances occur, the Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure circumstances without subjecting Seller to any liability or penalty. Seller may, at its option, suspend performance, cancel, terminate or vary the terms of the contract for the relevant Products/Services, without any liability or penalty, by giving notice to Buyer.

#### **11. Non-Waiver**

No course of dealing or failure of either party to strictly enforce any Condition or term, right or condition of the parties' contract shall be construed as a waiver of that term, right or condition nor shall Seller's acceptance of a purchase order be deemed as an acceptance of any terms and conditions therein.

#### **12. Confidentiality**

Clients or suppliers relating to Products/Services bought from Seller, unless otherwise agreed and must not disclose the terms of the parties' contract to any third party.

#### **13. Insolvency**

This clause applies if: (a) Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or (b) an encumbrancer takes possession, or an administrator or administrative receiver is appointed, of any of Buyer's property or assets; or (c) Buyer ceases, or threatens to cease, to carry on business; or (d) Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to Buyer and notifies Buyer accordingly. If this clause applies then, without prejudice to any other right or remedy available to Seller, Seller shall be entitled to terminate the Agreement or suspend any further deliveries without any liability to Buyer, and if the Products/Services have been delivered but not paid for, the price shall become immediately due and payable by the Buyer notwithstanding any contrary agreement.

#### **14. Entire Agreement**

These Conditions and the price, quantity and Products detailed in Seller's invoice for the relevant Products/Services shall constitute the entire agreement between the parties with respect to the supply of such Products/Services; and may not be rescinded or terminated by Buyer unless provided herein. The provisions of the entire agreement supersede all prior oral and written quotations, agreements, and understandings of the parties with respect to the subject matter thereof. Seller may amend to these Conditions by giving notice in writing to the Buyer. If any provision of these Conditions is held to be invalid or unenforceable by any court having competent jurisdiction, this shall be treated as severable, and it shall not affect the validity and enforceability of the remaining Conditions, which shall remain in full force and effect. The Buyer shall not assign or transfer any of Buyer's rights or obligations under the contract between Buyer and Seller unless otherwise agreed by Seller in writing. Unless otherwise expressly provided for in these Conditions, these Conditions may only be enforced by the Seller and the Buyer.