



## TERMS AND CONDITIONS OF SALE - Vortron Technologies, Inc.

**1. PRICING, DELIVERY AND PAYMENT:** Prices are based on the cost of material, labor, transport and statutory ruling at the date of this Tender or Contract, and may be varied by Vortron Technologies, Inc. ("Seller") should these costs increase during performance of the Contract. The prices for goods and articles delivered under this Tender or Contract do not include customs charges or duties, or sales, use, excise or similar taxes, or transportation, rigging, drayage, insurance charges and other costs associated with the delivery of the goods to the destinations specified by Buyer. Therefore, Buyer will pay directly to Seller, in addition to the prices specified in this Tender or Contract, any amount set forth on Seller's invoices for customs charges, duties and/or taxes (or provide applicable tax exemption certificates acceptable to the taxing authorities) and special packaging costs, and shall pay directly to the involved carrier(s) all such delivery related costs. All licenses or certificates required for import or export of the goods and articles shall be the responsibility of and obtained at the cost of Buyer. Buyer shall pay all invoices in accordance with the terms specified under this Tender or Contract. If payment is not made when due, all discounts granted by Seller to Buyer under this Tender or Contract shall be forfeited and Buyer shall be assessed a late charge equal to one and one-half percent (1-1/2%) of the past due balance for each month or partial month following the due date. Unless otherwise specified by Seller, all deliveries shall be made F.O.B. common carrier, Seller's plant. Title and risk of loss or damage will transfer from Seller to Buyer upon delivery of goods and articles to the F.O.B. point.

**2. SECURITY INTEREST:** Seller reserves and Buyer grants, until full payment is received, a Purchase Money Security Interest in the goods, articles and the proceeds of any sale thereof. Seller has the right upon demand, to repossess any of the goods and articles delivered thereunder if Buyer fails to make timely payments. A copy of this Tender or Contract may be filed as a Financing Statement with the appropriate authorities to protect the security interest of Seller.

**3. DELIVERY DATES:** Any date or period for delivery or any date of delivery scheduled under this Tender or Contract shall date from the receipt by Seller of a written order and shall be subject to the receipt of all necessary instructions, licenses, letters of credit and/or deposit payments and is intended by Seller and accepted by Buyer as being an estimate only, not giving rise to contractual obligations. Buyer shall not be entitled to rescind this Tender or Contract or reject any goods or articles or claim damages on account of delay unless Seller fails to make delivery within a reasonable period of time having regard to all circumstances. Seller shall not be liable for delays or failure to make delivery for causes beyond Seller's control, affecting it or its suppliers, including, in part: natural disasters; war; Buyer's conduct; labor unrest; riot; governmental interference; unavailability or shortage of labor; materials, fuel or power through customary means at normal rates; failure or destruction of plant or goods or articles arising from any cause whatsoever; or failure of transportation. Any delays of more than 90 days as a result of the aforesaid events will cause the contract to terminate with no liability to either party. Seller shall not, in any event, be liable for any special, consequential or indirect loss or damage (including but without limitation, any loss of or in respect of profits or wages or overhead) suffered by Buyer as a result of any delay in or failure of delivery.

**4. VALIDITY:** Seller's tenders are open for acceptance thirty (30) days from the date thereof unless previously withdrawn. Any orders based upon Seller's tenders are subject to Seller's written acknowledgment and are acceptable only so far as they contain no conditions at variance with its terms and conditions, as provided in Article 15.

**5. CANCELLATION:** Buyer shall have no right in any circumstance to cancel the goods or articles scheduled under this Tender or Contract without the prior written consent of Seller and subject to compliance by the Buyer with such requirements (including requirements as to the payment of adequate

compensation) as Seller may impose as a condition of giving such consent.

**6. RESCHEDULING:** Buyer may reschedule any goods or articles scheduled provided written notice of reschedule is actually received by Seller thirty (30) days prior to the scheduled ship date for such goods or articles.

**7. TERMINATION:** This Tender or Contract may be terminated by either party at any time: (a) if the other party has breached any material provision contained in this Tender or Contract and has not cured the breach within thirty (30) days of receipt of written notice of the breach; or (b) if either party petitions for relief under the Bankruptcy Act, if a receiver is appointed to conduct its business, or if it makes an assignment for the benefit of creditors or if an involuntary bankruptcy petition is brought against it and has not been discharged within 30 days of date bought. Seller's termination of this Tender or Contract shall be without prejudice to any other remedies Seller may have. In the event Seller terminates this Tender or Contract pursuant to this Article 7, in addition to any other remedies available to Seller, Buyer shall be obligated to pay for all goods and articles shipped and shall accept delivery of and pay for all goods and articles on order as of the date of termination.

**8. ERRORS & SHORTAGES: BUYER MUST INSPECT ORDERS UPON RECEIPT** Buyer shall notify Seller, in writing, within seven (7) calendar days after date of Seller's invoice, of any claimed shortages or of rejection of the delivery. Sufficient detail to establish proper grounds shall be included in any rejection. If the intended use of the goods and articles is not clear or is in dispute, then the time limit for claiming damage, shortage or error is twenty (20) business days from Seller's shipment date to Buyer. Claims for damage, shortage, and errors are waived unless received by Seller within the time limits set herein.

**9. RETURNS, RESTOCKING CHARGES AND INVENTORY ADJUSTMENTS:** Electrical, electronic, electronic tuning, discontinued, close-out, damaged, custom, and special order goods are NOT returnable. Current regular production goods and articles shipped to Buyer may be returned within thirty (30) calendar days after delivery to Buyer if the goods and articles are in "like new" condition, unopened, undamaged, unused, not missing any parts, and in their original undamaged packaging. All returns to Seller and inventory adjustments must be pre-authorized and accompanied by a Return Authorization ("RA") number, freight prepaid. Each returned shipping box must include the RA number and all return freight must be prepaid. COD and Freight Collect Returns are not accepted. Goods and articles returned to Seller without RA numbers will be refused and returned to You. Returns must be shipped by Buyer to Seller within 15 (fifteen) calendar days of Seller's assignment to Buyer of an RA number. All returns must be accompanied by a copy of the original invoice and a brief explanation or reason for return. Seller will issue credit after Seller inspect and decide whether to accept the returned goods and articles back into inventory. All returned goods and articles that are accepted back will be subject to a restocking and handling fee of \$25 or 25%, whichever is greater. Refused or missed shipments returned to Seller do not constitute a right to a return, refund or credit. Buyer are responsible for all return freight charges and the restocking and handling fee as outlined above. If Buyer wishes rejected returned goods and articles to be reshipped, Seller may require Buyer to prepay the invoice plus any applicable additional charges that may apply.

**10. ORDER CANCELLATION:** Orders for custom goods, articles and services are not cancellable. Production starts as soon as Seller orders parts from Seller's vendors to fulfill Buyer's order. Special order and special runs of regular production goods are subject to a 25% cancellation charge if production has not started, and are not cancellable after production has started. Orders for regular production goods are subject to a 5% cancellation charge before shipment and a 25% cancellation charge after shipment.

**11. BACK ORDERS:** All back orders will be held and shipped when available unless Buyer specifies otherwise in writing to cancel prior to shipment. If Seller experiences a delay of the estimated shipment date, Seller will notify Buyer prior to shipment.

**12. SETOFF:** Buyer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Seller, its parent, affiliates, subsidiaries or other divisions or units.

**13. CHANGES:** Buyer may issue a written change order to request changes within the scope of the this Tender or Contract. Such requests are subject to acceptance by Seller. Seller will inform Buyer if the change will cause an increase in Seller's costs or time required to perform. The change will become effective, and Seller will commence performance, only upon execution of an amendment hereunder. Unless otherwise agreed in writing, upon performance of the change order Seller will be entitled to invoice Buyer and Buyer shall be obligated to pay for the costs of the change, even if Seller agreed to proceed with the change prior to execution of an amendment.

**14. SPECIAL TOOLING:** Special Tooling includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacement items, now existing or created in the future, together with all related specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities created or used by Seller in the performance of its obligations under this Agreement. Seller owns all Special Tooling, except to the extent an authorized representative of Seller specifically transfers title for any Special Tooling in writing to Buyer. Any transfer of title to Special Tooling does not include transfer of Seller's intellectual property

**15. GENERAL PROVISIONS:** These terms and conditions shall supersede all terms and conditions printed or implied on any purchase order or other document issued by Buyer. No other terms or conditions shall be binding upon Seller unless said terms and conditions are specifically accepted in writing by Seller. The failure of Seller to enforce at any time or for any period of time any of the provisions of this Tender or Contract shall not constitute a waiver of such provisions. If any provision of this Tender or Contract should be determined to be unenforceable or illegal, it shall be deemed severable from the other provisions which shall remain valid and enforceable. The validity, performance and construction of this Tender or Contract shall be governed by the laws of the State of California. Buyer agrees to accept venue in, and accept the exclusive jurisdiction of, the courts sitting in the State of California in the County of Ventura. Any disputes arising out of the performance of this Tender or Contract shall be settled in accordance with the rules of the American Arbitration Association. The arbitrator may award all costs of dispute resolution, including attorneys' fees, to the prevailing party. Seller agrees that the goods and articles to be furnished under this Tender or Contract will be produced in compliance with all applicable federal requirements with respect to fair labor standards and equal employment opportunity.

**16. LIMITED WARRANTY ON GOODS OR ARTICLES (INCLUDING SOFTWARE):** Seller warrants the goods and articles, including, if applicable, any software, delivered under this Tender or Contract which carry no warranty to be free from defects in parts and workmanship for a period of two (2) years from the date of delivery. Seller warrants spare parts and service, including software updates, delivered under this Tender or Contract to be free from defects in parts and workmanship for a period of ninety (90) days from the date of delivery. In response to a valid warranty claim under this Article 16, Seller will, at its option, repair or replace the defective goods and articles (including software) at no additional charge, except as set forth below. Repair parts and replacement goods and articles (including software) will be furnished on an exchange basis and will be either reconditioned or new. All replaced parts and goods or articles (including software) become the property of Seller. This limited warranty does not include service to repair damage to the goods and articles (including software) resulting from Buyer's negligence, misuse, acts of God or modification of the goods and articles (including software). Seller's obligations under this limited warranty are



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conditioned upon Buyer's compliance with Seller's reasonable instructions and requests in connection with Seller's performance of such obligations. Service under this limited warranty may be obtained by delivering the goods and articles (using the original shipping container or its equivalent) during the warranty period to Seller's premises provided Buyer bears all costs of transportation to and from Seller's premises. Buyer shall assume the risk of loss or damage in transit.

**17. DISCLAIMER OF IMPLIED WARRANTIES AND LIMITATION OF LIABILITY:** EXCEPT AS SET FORTH HEREIN AND IN THE LIMITED WARRANTY IN SELLER'S STANDARD GOODS OR ARTICLES LITERATURE, IF APPLICABLE, SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING OUT OF OR IN CONNECTION WITH THE SALE OR USE OF THE GOODS AND ARTICLES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL SOFTWARE AND ASSOCIATED MATERIALS ARE LICENSED TO THE BUYER PURSUANT TO THE SOFTWARE LICENSE PROVISIONS SET FORTH IN ARTICLE 18 BELOW AND ANY LICENSE AGREEMENT DELIVERED WITH THE SOFTWARE AND ASSOCIATED MATERIALS.

THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE 17 ALSO HAS AN EFFECT WITH RESPECT TO SOFTWARE AND ASSOCIATED MATERIALS. OTHER THAN AS STATED ABOVE, THE LIMITED WARRANTY SET FORTH IN THIS SECTION, COMBINED WITH THE IMPLIED WARRANTIES CONTAINED IN SELLER'S STANDARD GOODS AND ARTICLES LITERATURE, IF APPLICABLE, SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND SHALL ESTABLISH THE SOLE AND EXCLUSIVE LIABILITY OF SELLER, ITS SUCCESSOR OR ASSIGNS IN CONNECTION WITH THE GOODS AND ARTICLES (INCLUDING SOFTWARE). IN NO EVENT WILL SELLER BE LIABLE TO BUYER FOR DAMAGES, INCLUDING SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE SUCH GOODS AND ARTICLES (INCLUDING SOFTWARE), EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR ANY CLAIM BY ANY OTHER PARTY. SOME GOVERNMENTAL BODIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR OF LIABILITY FOR SPECIAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**18. SOFTWARE LICENSE:** Buyer has the non-exclusive right to use Seller's factory installed software on the goods and articles purchased from Seller only. Buyer may not access the software located internally in the goods and articles in any manner except for the sole purpose of operating the goods and articles as described in the standard goods and articles literature provided by Seller. Buyer may not copy, permit to be copied by Buyer's personnel or any other entity, permit the access of any party to, Seller's software or to the hardware where the software is located within the goods and articles. This license shall be deemed accepted by Buyer on the date of shipment of the goods and articles by Seller to Buyer. This license may be terminated with the return of the memory device located within the goods and articles where the software resides. It will also terminate if Buyer fails to comply with any term or condition set forth in the license agreement herein. This license is transferable to any future owner of the goods and articles in so much the receiving party agrees to the terms of this license agreement

**19. TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the goods and articles, including without limitation the serial numbers or trademarks on nameplates or cast or machined components.

**20. PATENT/ COPYRIGHT INDEMNIFICATION:** Seller will defend any suit against the Buyer arising out of any actual or alleged patent or copyright infringement of a valid United States patent or copyright, to the extent based on the goods or articles as delivered by Seller, and indemnify for any final judgment assessed against Buyer resulting from such suit provided that Buyer notifies Seller at such time as it is apprised of the third-party claim, and

agrees to give sole and complete authority, information and assistance (at Seller's expense) for the defense and disposition of the claim. Seller will not be responsible for any compromise or settlement made without Seller's written consent. Seller will have no obligation or liability with respect to: (a) goods and articles provided pursuant to Buyer's designs, drawings or manufacturing specifications; (b) goods and articles used other than for their ordinary purpose; (c) claims of infringement resulting from combining any goods and articles furnished hereunder with any goods and articles not furnished by Seller; (d) use of other than the latest version of software released by Seller; or (e) any modification of the goods and articles other than a modification by Seller. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer as set forth in this Article for any suit against Seller based upon a claim of infringement resulting from (a), (b), (c), (d) or (e) of the preceding paragraph. Because Seller has exclusive control of resolving infringement claims hereunder, in no event will Seller be liable for Buyer's attorney fees or costs. If a claim is made against a good and article, or if Seller believes that such a claim is likely, Seller may, at its option, and at its expense, (i) procure for Buyer the right to continue using the goods and articles; (ii) replace or modify the goods and articles so that it becomes non-infringing; or (iii) accept return of the goods and articles, or terminate Buyer's license to use the infringing goods and articles, and grant Buyer a credit for the purchase price or license fee paid for such goods and articles, less a reasonable depreciation for use, damage, and obsolescence. Further, if a claim of patent or copyright infringement is made against goods and articles, or if Seller believes that such a claim is likely, Seller may cease shipping infringing goods and articles without being in breach of this Agreement. Any liability of Seller under this Article is subject to the provisions of the "Limitations of Liability" Article of this Agreement. This Article states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

**21. ILLUSTRATIONS, DRAWINGS, SPECIFICATIONS ETC.:** All illustrations, drawings, specifications provided by Seller (including any contained in Seller's standard goods and articles literature) are intended to present a general idea of the goods and articles described therein but are not binding on Seller and are subject to variations in design and specifications by Seller.

**22. USE OF PRODUCT:** Buyer agrees that it is the Buyer's responsibility to use the goods and articles within the guidelines provided in general goods and articles literature. Seller is not responsible for any claims or damages incurred in connection with Buyer's or any third party's use or misapplication of the goods and articles. Buyer agrees the purchase of the goods and articles is solely for its intended use and Buyer will not resell, re-license or transfer the goods and articles for the purpose of disassembly to copy or cause to be copied, any feature, component or theory of design of the goods and articles. No adaptations, translations, modifications, or special versions may be made without prior permission in writing from the President of Seller. Violation of these Ts & Cs will result in the revocation of Buyer's status as a customer.

**23. PERFORMANCE, WEIGHT, MEASUREMENTS AND POWERS:** Although carefully computed by Seller, all performance, weights, measurements and powers of the goods and articles delivered under this Tender or Contract must be considered approximate and are not guaranteed by Seller.

**24. PROVISION OF DRAWINGS, ETC. BY CUSTOMER:** (a) All drawings, designs, specifications and other information to be provided by Buyer in connection with the goods and articles scheduled under this Tender or Contract shall be furnished by Buyer in such forms and by such dates as will enable Seller to perform its obligations under this Tender or Contract and in default thereof, the time for the performance of Seller's obligations under

this Tender or Contract, shall be extended accordingly. (b) Buyer shall indemnify Seller against all costs, expenses, damages and penalties incurred by Seller as a result of, or in connection with, any infringement or alleged infringement of any patent, trademark, design or any other right whether or not of the same nature as the foregoing to which any third party may be entitled arising out of the use of any drawings, designs, specifications or other information furnished or instructions given by Buyer in connection with the goods and articles scheduled under this Tender or Contract.

**25. MULTIPLE ORDERS:** Seller may deliver orders for more than one item of goods and articles individually and each item thereof shall be deemed to be sold under a separate contract and no failure of, or delay in, delivery of any item of goods and articles nor any defect therein, shall entitle Buyer to treat the contract as repudiated with regard to any remaining goods and articles scheduled under this Tender or Contract.

**26. WAIVERS:** Seller's rights and remedies shall not be prejudiced by any indulgence or forbearance to Buyer and no waiver by Seller of any breach by Buyer shall operate as a waiver of any subsequent breach.

**27. ASSIGNMENT:** This Tender or Contract, or any part thereof, shall not be assigned by Buyer without the prior consent of Seller.

**28. MISREPRESENTATION:** Any error, omission, misrepresentation or mis-statement in this Tender or Contract or in the course of negotiations leading thereto shall not entitle either the Seller or Buyer to rescind this Tender or Contract nor (unless the error, omission, misrepresentation, or mis-statement relates to a matter materially affecting the value of the goods and articles and this Tender or Contract has been entered into in reliance thereon) shall either party be entitled to any damages or compensation in respect thereof.

**29. VARIATIONS:** These terms and conditions may not be varied except as approved in writing by Seller's President.