

Omron Electronic Components LLC

Terms and Conditions of Sales (page 1 of 2)

I. GENERAL

- Definitions:** The words used herein are defined as follows:
 - Terms: These terms and conditions
 - Seller: Omron Electronic Components LLC and its subsidiaries
 - Buyer: The buyer of Products, including any of buyer's customers
 - Buyer's devices: Parts/components, electronic substrates, devices, equipment or systems manufactured and/or supplied by Buyer
 - Buyer's application: Application of the Product by Buyer and/or Buyer's customers which includes embedding and/or using the Product in Buyer's devices
 - Products: Products and/or services of Seller
 - Including: Including without limitation
 - Software: Software program embedded in the Product
- Offer; Acceptance:** These Terms are deemed part of all quotations, acknowledgments, invoices, purchase orders and other documents, whether electronic or in writing, relating to the sale of Products by Seller. Seller hereby objects to any Terms proposed in Buyer's purchase order or other documents which are inconsistent with, or in addition to, these Terms.
- Distributor:** Any distributor shall inform its customer of the contents of these terms and conditions and ensure they accept and are bound by them.

II. SALES

- Prices; Payment:** All prices stated are current, subject to change without notice by Seller. Buyer agrees to pay the price in effect at the time the purchase order is accepted by Seller. Payments are due net 30 days from invoice date unless otherwise stated in the invoice. Buyer shall have no right to set off any amounts against any amount owed to Seller.
- Discounts:** Cash discounts, if any, will apply only on the net amount of invoices sent to Buyer after deducting transportation charges, taxes and duties, and will be allowed only if
 - the invoice is paid according to Seller's payment terms and (b) Buyer has no past due amounts owing to Seller.
- Interest:** Seller, at its option, may charge Buyer 1.5% interest per month or the maximum legal rate, whichever is less, on any balance not paid within the stated terms.
- Orders:** Seller will accept no order less than 200 U.S. dollars net billing.
- Currencies:** If the prices quoted herein are in a currency other than U.S. dollars, Buyer shall make remittance to Seller at the then current exchange rate most favorable to Seller; provided that if remittance is not made when due, Buyer will convert the amount to U.S. dollars at the then current exchange rate most favorable to Seller available during the period between the due date and the date remittance is actually made.
- Governmental Approvals:** Buyer shall be responsible for all costs involved in obtaining any government approvals regarding the importation or sale of the Products.
- Taxes:** All taxes, duties and other governmental charges (other than general real property and income taxes), including any interest or penalties thereon, imposed directly or indirectly on Seller or required to be collected directly or indirectly by Seller for the manufacture, production, sale, delivery, importation, consumption or use of the Products sold hereunder (including customs duties and sales, excise, use, turnover and license taxes) shall be charged to and remitted by Buyer to Seller.
- Financial:** If the financial position of Buyer at any time becomes unsatisfactory to Seller, Seller reserves the right to stop shipments or require satisfactory security or payment in advance. If Buyer fails to make payment or otherwise comply with these Terms or any related agreement, Seller may (without liability and in addition to other remedies) cancel any unshipped portion of Products sold hereunder and stop any Products in transit until Buyer pays all amounts, including amounts payable hereunder, whether or not then due, which are owing to it by Buyer. Buyer shall in any event remain liable for all unpaid accounts. Buyer agrees to pay all collection costs, court costs and legal fees incurred to collect delinquent balances.
- Cancellation; Etc:** Orders are not subject to rescheduling or cancellation unless Buyer indemnifies Seller fully against all costs or expenses arising in connection therewith.
- Force Majeure:** Seller shall not be liable for any delay or failure in delivery resulting from causes beyond its control, including earthquakes, fires, floods, strikes or other labor disputes, shortage of labor or materials, accidents to machinery, acts of sabotage, riots, delay in or lack of transportation or the requirements of any government authority.
- Shipping; Delivery:** Unless otherwise expressly agreed in writing by Seller:
 - All sales and shipments of Products shall be FCA shipping point per Incoterms 2010 (unless otherwise stated in writing by Seller), at which point title to and all risk of loss of the Products shall pass from Seller to Buyer, provided that Seller shall retain a security interest in the Products until the full purchase price is paid by Buyer;
 - Delivery and shipping dates are estimates only; and
 - Seller will package Products as it deems proper for protection against normal handling and extra charges apply to special conditions.
- Claims:** Any claim by Buyer against Seller for shortage or damage to the Products occurring before delivery to the carrier or any claim related to pricing or other charges must be presented in detail in writing to Seller within 30 days of receipt of shipment.
- Credit Balance:** Customer agrees that Omron Electronic Components LLC will cancel and have no further liability for any credit balance regardless of reason (overpayment, returns, etc.) which remains open after 1 year of the issuance date.

III. PRECAUTIONS

- Suitability:** IT IS THE BUYER'S SOLE RESPONSIBILITY TO ENSURE THAT ANY OMRON PRODUCT IS FIT AND SUFFICIENT FOR ITS INTENDED USE. BUYER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING APPROPRIATENESS OF THE PARTICULAR PRODUCT WITH RESPECT TO THE BUYER'S APPLICATION INCLUDING (A) ELECTRICAL OR ELECTRONIC COMPONENTS, (B) CIRCUITS, (C) SYSTEM ASSEMBLIES, (D) END PRODUCT, (E) SYSTEM, (F) MATERIALS OR SUBSTANCES OR (G) OPERATING ENVIRONMENT. Buyer acknowledges that it alone has determined that the Products will meet its requirements of the intended use in all cases. Buyer must know and observe all prohibitions of use applicable to the Product/s.
- Use with Attention:** The following are some examples of applications for which particular attention must be given. This is not intended to be an exhaustive list of all possible uses of any Product, nor to imply that any use listed may be suitable for any Product:
 - Outdoor use, use involving potential chemical contamination or electrical interference
 - Use in consumer Products or any use in significant quantities
 - Energy control systems, combustion systems, railroad systems, aviation systems, medical equipment, amusement machines, vehicles, safety equipment, and installations subject to separate industry or government regulations
 - Systems, machines, and equipment that could present a risk to life or property
- Prohibited Use:** NEVER USE THE PRODUCT FOR AN APPLICATION INVOLVING SERIOUS RISK TO LIFE OR PROPERTY WITHOUT ENSURING THAT THE SYSTEM AS A WHOLE HAS BEEN DESIGNED TO ADDRESS THE RISKS, AND THAT THE PRODUCT IS PROPERLY RATED AND INSTALLED FOR THE INTENDED USE WITHIN THE OVERALL EQUIPMENT OR SYSTEM.
- Motorized Vehicle Application:** USE OF ANY PRODUCT/S FOR A MOTORIZED VEHICLE APPLICATION MUST BE EXPRESSLY STATED IN THE SPECIFICATION BY SELLER.
- Programmable Products:** Seller shall not be responsible for the Buyer's programming of a programmable Product.

IV. WARRANTY AND LIMITATION

- Warranty:** Seller's exclusive warranty is that the Products will materially conform to Seller's then current published documentation for a period of twelve months from the date of sale by Seller (or such other period expressed in writing by Seller). Software provided by Seller is provided "as is" and Seller makes no conditions, warranties or representations of any kind with regard to the Software, including without limitation, any implied warranties of satisfactory quality, merchantability, fitness for a particular purpose, title and non-infringement, all of which are, to the extent permissible by law, hereby expressly excluded. Further, Seller does not warrant results of use or that the Software is bug free or that its use will be uninterrupted. The Software is not warranted to be free from errors, nor is there any warranty of interoperability or compatibility with any other equipment or software. If Seller provides software or hardware from third parties (parties other than Seller), none of the warranties contained herein shall apply. The conditions and warranties of these third parties will exclusively apply to such software or hardware and Seller is only obliged to provide information on these conditions or warranties when requested to do so. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF SELLER'S OBLIGATIONS HEREUNDER.
- Buyer Remedy:** In the event of a breach of the foregoing warranty, Buyer's sole and exclusive remedy and Seller's sole and exclusive liability and obligation hereunder shall be to replace (in the form originally shipped with Buyer responsible for labor charges for removal or replacement thereof) the non-complying Product or, at Seller's election, to repay or credit Buyer an amount equal to the purchase price of the Product; provided that there shall be no liability for Seller or its affiliates unless Seller's analysis confirms that the Products were correctly handled, stored, installed and maintained and not subject to contamination, abuse, misuse or inappropriate modification. Return of any Products by Buyer must be approved in writing by Seller before shipment.
- Limitation on Liability:** SELLER AND ITS AFFILIATES, LICENSORS, AND SUPPLIERS SHALL NOT BE LIABLE TO BUYER, ITS CUSTOMERS, OR ANY OTHER THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR PRODUCTION OR COMMERCIAL LOSS IN ANY WAY CONNECTED WITH THE PRODUCTS, WHETHER SUCH CLAIM IS BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR STRICT LIABILITY. FURTHER, IN NO EVENT SHALL LIABILITY OF SELLER OR ITS AFFILIATES, LICENSORS, AND SUPPLIERS EXCEED THE INDIVIDUAL PRICE OF THE PRODUCT ON WHICH LIABILITY IS ASSERTED. SELLER SHALL NOT BE LIABLE FOR ANY MALFUNCTION OF THE PRODUCT OR BUYER'S APPLICATION CAUSED BY ANY SOFTWARE PROGRAM OTHER THAN THE SOFTWARE. IN ADDITION, SELLER SHALL HAVE NO LIABILITY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT OR SIMILAR CLAIMS, EXPENSES OR LIABILITIES OF ANY TYPE IN CONNECTION WITH: (i) USE AND/OR APPLICATION OF THE PRODUCT IN COMBINATION WITH ANY DEVICE, COMPONENT, SOFTWARE, APPLICATION OR DATA NOT SUPPLIED BY SUPPLIER, INCLUDING BUT NOT LIMITED TO BUYER'S AND ITS CUSTOMER'S PRODUCTS; (ii) ALTERATION OF THE PRODUCTS BY BUYER OR ANY THIRD PARTY; OR (iii) USE OF THE PRODUCT IN ANY MANNER OTHER THAN FOR WHICH THEY HAVE BEEN DESIGNED.
- Indemnities:** Buyer shall indemnify and hold harmless Seller, its affiliates and its employees from and against all liabilities, losses, claims, costs and expenses (including attorney's fees and expenses) related to any claim, investigation, litigation or proceeding (whether or not Seller is a party) which arises or is alleged to arise from Buyer's acts or omissions under these Terms or in any way with respect to the Products, including Buyer's or its customers' decisions to combine those Products with non-Seller products.

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V. INFORMATION; ETC.

1. **Intellectual Property:** The intellectual property embodied in the Products is the exclusive property of Seller and its affiliates and Buyer shall not attempt to duplicate it in any way without the written permission of Seller. Buyer (at its own expense) shall indemnify and hold harmless Seller and defend or settle any action brought against Seller to the extent that it is based on a claim that any Product made to Buyer specifications infringed intellectual property rights of another party.
2. **Property; Confidentiality:** Notwithstanding any charges to Buyer for engineering or tooling, all engineering and tooling shall remain the exclusive property of Seller. All information and materials supplied by Seller to Buyer relating to the Products are confidential and proprietary, and Buyer shall limit distribution thereof to its trusted employees and strictly prevent disclosure to any third party.
3. **Performance Data:** Performance data is provided as a guide in determining suitability and does not constitute a warranty. It may represent the result of Seller's test conditions, and the users must correlate it to actual application requirements.
4. **Change In Specifications:** Product specifications and descriptions may be changed at any time based on improvements or other reasons. It is Seller's practice to change part numbers when published ratings or features are changed, or when significant engineering changes are made. However, some specifications of the Product may be changed without any notice.
5. **Errors And Omissions:** The information on Seller's website or in other documentation has been carefully checked and is believed to be accurate; however, no responsibility is assumed for clerical, typographical or proofreading errors or omissions.
6. **Export Controls:** Buyer shall comply with all applicable laws, regulations and licenses regarding (a) export of the Products or information provided by Seller; (b) sale of Products to forbidden or other proscribed persons or organizations; (c) disclosure to non-citizens of regulated technology or information.
7. **Anti-Corruption:** Any Buyer (including any distributor) agrees that it: (i) will comply in all respects with all applicable laws and regulations, including without limitation the US Foreign Corrupt Practices Act; (ii) will not, directly or indirectly, offer any payments or anything of personal value to a governmental official or person employed by or associated with an entity with any governmental ownership or control; (iii) to the extent applicable, is being paid a reasonable market rate for its services and is not receiving any funds or other resources from Seller for use in making bribes or in otherwise violating this paragraph; and (iv) will defend, indemnify and hold harmless Seller and its affiliates, officers, directors and employees from and against any and all claims, expenses or liabilities that may arise in connection with this paragraph.
8. **Software:** Buyer is granted a non-exclusive license to use the Software solely as embedded in the accompanying hardware Product and as contemplated in its accompanying documentation, provided that Buyer shall not and shall cause others not to:
 - (a) Extract the Software from the Product;
 - (b) Decompile, disassemble or reverse-engineer the Software;
 - (c) Use the Software with any application other than Buyer's application; and
 - (d) Agree to anything conflicting with the provision of these Terms with any third parties, including but not limited to customers of Buyer and end users of Buyer's devices.

VI. MISCELLANEOUS

1. **Waiver:** No failure or delay by Seller in exercising any right and no course of dealing between Buyer and Seller shall operate as a waiver of rights by Seller.
2. **Assignment:** Buyer may not assign its rights hereunder without Seller's written consent.
3. **Law:** These Terms are governed by Illinois law (without regard to conflict of laws). Federal and state courts in Cook County, Illinois have exclusive jurisdiction for any dispute hereunder.
4. **Amendment:** These Terms constitute the entire agreement between Buyer and Seller relating to the Products, and no provision may be changed or waived unless in writing and signed by the parties.
5. **Severability:** If any provision hereof is rendered ineffective or invalid, such provision shall not invalidate any other provision.