



## **Sales Terms & Conditions** (June 2011)

ANY ORDER OF BUYER, WHETHER BY ELECTRONIC DATA INTERCHANGE, FAX, PHONE, INTERNET OR OTHERWISE, SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS, AND SELLER'S OFFER, ORDER ACKNOWLEDGMENT, ORDER ACCEPTANCE OR SALE OF ANY PRODUCTS IS EXPRESSLY CONDITIONED UPON APPLICATION OF THESE TERMS AND CONDITIONS TO SUCH TRANSACTION. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER (REGARDLESS OF HOW COMMUNICATED) ARE EXPRESSLY REJECTED AND WILL NOT BE BINDING UPON SELLER. ANY ORDER FOR PRODUCTS, ANY STATEMENT OF INTENT TO PURCHASE PRODUCTS OR ANY DIRECTION TO PERFORM WORK, WILL CONSTITUTE BUYER'S AGREEMENT TO THESE TERMS AND CONDITIONS.

1. **ACCEPTANCE, PRICE AND TERMS OF PAYMENT** - All orders are subject to acceptance by an officer or other authorized official of Seller at its offices in Jamestown, New York. All accepted orders are subject to Seller's selling prices in effect as of the date of shipment. Remittances are to be made in United States dollars to Seller's specified address. Unless otherwise specifically agreed to by Seller in writing, the terms of sale shall be net thirty (30) days based on the date of invoice except when a quotation expressly provides otherwise. Delivery will be made and risk of loss and title will pass to Buyer EX WORKS (Incoterms 2010) Seller's factory, Jamestown, New York. Published prices and discounts are subject to change without notice. All written quotations expire after thirty (30) calendar days from the date of quotation unless withdrawn, in writing, at an earlier date.
2. **TAXES** - Prices on the products specified herein are exclusive of all applicable taxes, including without limitation, any federal, national, state or municipal taxes on manufacture, sales, receipts, gross income, occupation or use. Any such taxes are not included in quoted prices and will be added to the invoice as a separate charge and paid by Buyer.
3. **CREDIT AND SECURITY** - Buyer agrees to make prompt payment in accordance with the terms hereof. Seller reserves the right to modify, change or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved. Seller hereby retains, and Buyer grants to Seller, a security interest in all products purchased by Buyer until Seller receives full payment therefor.  
  
Seller is authorized to file one or more financing statements to perfect such security interest.
4. **PACKAGING** - Seller reserves the right to select the manner in which the product is packaged. Special requirements from Buyer for packing will be subject to extra charges unless otherwise agreed to by Seller in writing.
5. **DAMAGE OR DELAY IN TRANSIT** - Seller assumes no liability beyond delivery to the carrier or forwarding agent of the product in good order, and is not liable for loss, damage or delay occurring thereafter. All claims for breakage and damage should be made to the carrier, but Seller will render Buyer reasonable assistance in attempting to secure satisfactory adjustment of any such claims.
6. **SHIPPING SCHEDULE** - Seller will establish planned delivery schedules as closely as possible in accordance with Buyer's expressed needs and will provide expected planned delivery dates when requested and will exercise diligence in meeting such planned delivery dates.
7. **EXCUSABLE DELAYS** – Notwithstanding any other provision hereof, Seller shall not be liable for any delay in delivery or the performance of any purchase order arising from causes beyond Seller's reasonable control. Without limiting the generality of the foregoing, causes beyond Seller's reasonable control shall include such things as fires, floods, earthquakes, substantial damage to Seller's facilities, accidents, riots, acts of God, open hostilities, declarations of national emergencies, war, governmental interference or embargoes, strikes, labor difficulties, and shortage of labor, fuel, power, materials or supplies.

8. CANCELLATION AND ALTERATION - Orders accepted by Seller cannot be countermanded or deliveries deferred by Buyer except with Seller's prior written consent and then only upon such terms as shall be acceptable to Seller. Orders for special items not normally produced or stocked in quantity may be cancelled or altered by Buyer only upon payment to Seller of all costs and expenses already incurred by Seller, together with Seller's anticipated profit from the sale. Cancellation charges on all completed items will be 100% of the selling price. Seller reserves the right to manufacture ahead of the planned delivery schedule whenever it is deemed necessary and any such advanced manufacture shall not void Buyer's responsibility for cancellation or alteration.
9. INSPECTION AND ACCEPTANCE – All products shall be deemed finally inspected and accepted within ten (10) days after delivery unless notice of a claim is given in writing to the Seller within that period.
10. WARRANTY AND LIMITATION OF LIABILITY - Seller warrants that all products will be free under normal use and service from defects in material or workmanship and that all products manufactured or furnished by Seller to Buyer's special order or to specifications furnished or approved by Buyer will conform within reasonable tolerances to such specifications. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE. SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. If any product fails the foregoing warranty within two (2) years from the date of delivery, or within such other time as is specified by Seller in the order (or if within one (1) year in the case of repairs), Seller agrees, provided Seller is notified promptly upon discovery of such defect, at Seller's option, to repair or replace the same without charge to Buyer, provided the product is returned to Seller's factory or designated agent with transportation charges prepaid and the product upon examination is found not to have been as warranted. All warranties shall be deemed voided if the product has not been properly installed or maintained, or has been operated outside the limits of rated and normal usage. All recommendations and representations as to the working accuracy of a system or device are based upon test and performance of the product at Seller's factory. Such recommendations and applications are not applicable to any loss of performance of the product resulting from misuse or any variation in the environment from the standard conditions at Seller's factory existing prior to delivery. THE REMEDY PROVIDED IN THE PRECEDING SENTENCES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER. SELLER'S TOTAL LIABILITY HEREUNDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT. SELLER SHALL IN NO EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE DELIVERY, USE, SALE, HANDLING OR POSSESSION OF THE PRODUCT, OR FROM ANY OTHER CAUSE WHATSOEVER.
11. PATENTS - Seller will defend any suit or proceeding brought against Buyer that is based upon a claim that any product, or any part thereof, or any normal and necessary use thereof, constitutes an infringement of any United States patent, provided Seller is notified of such suit or proceeding in reasonable time and is given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all legal and court costs and expenses and court assessed damages awarded therein against Buyer and resulting from or incident to such suit or proceeding. If at any time Seller determines there is a substantial question of infringement or in case any such product or any part thereof or use thereof is judicially held to constitute infringement and the use of such product or part is enjoined, Seller shall, in addition to the foregoing, at its own expense, either procure for Buyer the right to continue using and selling the product or part; or replace the product or part with non-infringing apparatus, or modify it so it becomes non-infringing or remove the product and refund the purchase price and the transportation and installation cost thereof. In no event does Seller agree to pay any recovery based upon Buyer's saving or profit through use of an infringing product or part regardless of whether the use be special or ordinary. The foregoing states the entire liability of Seller for patent infringement. The foregoing shall not apply to any product that is manufactured to Buyer's design.

12. **COMPLIANCE WITH LAWS** – All products shall comply with federal, state and local laws and regulations of the United States applicable to the manufacture, packing, sale and shipment of such products. Seller shall not comply with any law, regulation or requirement of any country other than the United States that would subject Seller to criminal or civil penalties or loss of tax benefits under any federal, state or local law or regulation of the United States (including, without limitation, any applicable export control laws or regulations), and the furnishing of any quotation or acknowledgment of any order does not constitute the furnishing of or an agreement to furnish any information that would subject Seller to any of the above mentioned penalties or loss of tax benefits. Seller shall not comply with any law, regulation or requirement of any country other than the United States that would increase Seller's costs, unless there is an appropriate adjustment in price.
13. **RETURNS** - No product may be returned for credit without the prior written authorization of Seller. Authorized return shipments must be returned in good order to Seller's factory from which initially shipped, must be accompanied by a packing slip, and must have transportation charges prepaid. Correspondence concerning all returned products should be addressed to our Jamestown, New York office. Seller reserves the right to deduct an adequate service charge from any credit to cover inspection, testing and handling.
14. **REPAIR** - All transportation charges on products returned for repairs must be prepaid by Buyer. The warranty period for all repairs is one (1) year from date of repair.
15. **PROTOTYPE** - If the product ordered by Buyer is a prototype or pilot product (a "non-series product"), then such product has not been built in the normal flow of series production, nor has it been inspected and tested as a series product. Use of any non-series product is at the sole risk of, and danger to, Buyer. Seller shall be liable for damages caused by a non-series product only in cases of Seller's gross negligence leading to physical damage, injury to health, or loss of life.
16. **GOVERNING LAW AND DISPUTE RESOLUTION** - The validity, performance and all matters relating to the interpretation and effect of any order or agreement to which these terms and conditions apply, and any amendment thereto, shall be governed by the internal substantive law of the State of New York. Seller and Buyer each acknowledge that the United Nations Convention on the International Sale of Goods is not applicable to any sale of products hereunder. Any dispute arising between Seller and a Buyer principally located in a country other than the United States and to whom shipment is made outside the United States shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such rules. Any such arbitration shall be conducted in the English language.
17. **CERTAIN DEFINITIONS** - As used herein: (i) the term "product" refers to all equipment, materials, supplies, components, services, engineering, design and data, or other work that Seller has contracted or agreed to supply to Buyer, (ii) the term "Seller" means MD ELECTRONICS Corporation, an Illinois corporation, and (iii) the term "Buyer" means the party other than Seller to the transaction or agreement to which these terms and conditions apply.
18. **GENERAL** - Any representation, understanding, proposal, agreement, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on Seller. No modification, amendment, rescission, waiver or other change to these terms and conditions shall be binding on Seller unless agreed to in writing by Seller. The invalidity, in whole or in part, of any paragraph or clause hereof shall not affect the validity of the remainder of such paragraph or clause or of any agreement resulting herefrom.

- End of contractual provisions -