

# TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** These terms and conditions constitute an offer by Aurora Circuits, LLC (the "seller") and this offer may only be accepted on these exact terms and conditions. No additional or conflicting terms or modifications shall be accepted. These terms and conditions supersede the terms and conditions of Buyer's order form, and any additional or conflicting terms or modifications set forth in Buyer's order are hereby objected to.

2. **PRICES.** Seller offers to sell the quantities of goods or services (the "Merchandise") designated on the reverse side at the prices specified. The prices for all Merchandise scheduled for shipment more than six (6) months beyond the date of this acknowledgement are subject to change within thirty (30) days notice in accordance with the prices in effect on the date of shipment. Product with gold content may be assessed a surcharge depending on current market value of gold.

3. **VARIATIONS IN QUANTITY.** The Seller reserves the right, with respect to each delivery, to deliver within three (3) percent of the scheduled quantity and to be paid pro rata for the quantity actually delivered.

4. **MINIMUM ORDER.** Seller maintains a minimum order by product type and these are subject to change. The minimum order amount applies to the piece part price only and any tooling or preparation charges are not included.

5. **ORDER SCHEDULING.** Orders are to be scheduled for delivery within twelve (12) months from order date. Subject to the above time restrictions, one reschedule per order will be allowed.

6. **PAYMENT.** Terms are net thirty (30) days from invoice date. Seller reserves the right to approve Buyer's credit and may require payment or satisfactory security prior to shipment at its discretion. A service charge of one and one-half percent (1-1/2%) per month on the unpaid balance shall be imposed on all accounts not paid when due. If Seller shall reasonably believe that Buyer is generally not paying its debts as they become due, Seller shall be entitled to cancel all Seller's obligations under agreement resulting herefrom, or any unfulfilled part of any such agreement without any liability to Seller whatsoever and without prejudice to Seller's rights.

7. **TAXES.** All prices quoted herein for the Merchandise are exclusive of any domestic or foreign government imposed taxes, duties, fees, excises or other charges. Whenever applicable, a separate charge will be made for such taxes and charges, whether noted in the invoice or added subsequently. Buyer shall bear such taxes and charges and shall be solely responsible for payment thereof.

8. **SHIPMENT.** Shipments of the Merchandise hereunder are F.O.B. Seller's factory and Buyer assumes all risk and liability for loss, damage or destruction after delivery of the Merchandise to the carrier. Seller shall have the right to make partial deliveries and to be paid pro rata for the Merchandise so delivered.

9. **DELIVERY.** Any delivery dates agreed to by Seller are only approximate and are subject to reasonable variation. In any event, Seller shall not be liable for delays or failures in performance of an order or default in delivery arising out of or resulting from causes beyond its control and without its fault or negligence, including but not limited to acts of God. In the event of delay for any such cause, the specified delivery date shall be extended for a reasonable length of time but not less than the period of delay. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. If Buyer rightly rejects, or rightly revokes acceptance of, any Merchandise, Buyer's sole and exclusive remedy in this event shall be the recovery of any expense incurred by it in returning such Merchandise (after first obtaining Seller's prior written consent to such return) to Seller and so much of the purchase price, if any, paid by Buyer to Seller for such Merchandise. Seller may, at its option, correct or remedy any deficiencies in such Merchandise at Buyer's premises in lieu of consenting to such return. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHERWISE, ARISING OUT OF ANY FAILURE TO DELIVER ANY MERCHANDISE TO BUYER, ANY DELAY IN THE DELIVERY THEREOF, OR ANY REJECTION OR REVOCATION OF ACCEPTANCE THEREOF BY BUYER.**

10. **INSPECTION.** All merchandise shall be finally inspected and accepted within fifteen (15) days after arrival at point of delivery. BUYER'S FAILURE TO SO INSPECT AND PROMPTLY SUBMIT A CLAIM SHALL SPECIFICALLY WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF, THEREFORE.

11. **WARRANTY.** Seller's sole warranty shall be the following:

A. **Warranty.** Seller warrants the Merchandise made by it to be free from defects in material or workmanship for ninety (90) days from date of initial sale of the Merchandise and agrees only to repair or replace at its own expense, F.O.B. the place of manufacture, any part of the Merchandise found to be defective in material or workmanship, provided Seller is notified of such defect or defects within the ninety day warranty period and given a reasonable time to correct the defect. In no case shall the warranty extend to defects arising following the operation beyond

rated capacity or the improper use or application of any Merchandise. Merchandise which shall conform to samples furnished to and accepted by Buyer shall not be considered defective.

B. **Disclaimer as to Consequential, Incidental or Special Damages and Maximum Liability.** UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGE WHICH ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAY SUFFER OR CLAIM TO SUFFER OR INCUR OR CLAIM TO INCUR AS A RESULT OF ANY DEFECT IN THE MERCHANDISE OR IN ANY CORRECTION OR ALTERATION THEREOF MADE OR FURNISHED BY SELLER OR OTHERS. "Consequential", "incidental", or "special damages" as used herein includes but is not limited to costs of transportation, lost sales, lost orders, lost profits, lost income, downtime, increased overhead, labor and material cost, and costs of manufacturing variances and operational inefficiencies. The maximum liability of Seller under the exclusive warranty set forth herein shall be the amount paid to Seller with respect to the Merchandise to which such warranty applies.

C. **Exclusive and Entire Warranty.** This warranty constitutes Seller's entire warranty as to the Merchandise and it is expressly agreed that the remedies of Buyer and those claiming under Buyer as stated in this warranty are exclusive. Seller does not assume (and has not authorized any other person to assume on its behalf) any other warranty or liability in connection with any Merchandise covered by this warranty. MANUFACTURER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER AS TO THE MERCHANDISE FURNISHED HEREUNDER, INCLUDING BUT NOT LIMITED TO EXPRESS OR IMPLIED WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSES SOLD, DESCRIPTION OR QUALITY OF THE MERCHANDISE FURNISHED HEREUNDER.

12. **TOOLING.** All tools, dies, fixtures, similar items and their related accessories (the "Tooling") used in the manufacture, testing or production of the Merchandise and furnished or ordered on behalf of Buyer shall be paid for by Buyer and, upon payment, shall become the property of Buyer. Seller will perform day-to-day maintenance on the Tooling at the expense of Buyer. Buyer agrees to insure the Tooling against all damages and risk of loss at its own expense. If the Tooling is not used for a period of one (1) year or if Seller requests removal of the Tooling, Buyer shall promptly remove Tooling or pay a reasonable storage fee.

13. **CANCELLATIONS.** Cancellations are subject to acceptance by the Seller, and are subject to cancellation charges. Any reduction in quantities order or any merchandise placed on hold over thirty (30) days shall constitute a partial cancellation subject to this clause.

14. **DEFENSE OF PATENT SUITS.** If any action, suit or proceeding shall be brought against Seller based upon any claim that the manufacture, sale or use of any Merchandise furnished to Buyer hereunder infringes any United States patent, Buyer shall, if promptly notified in writing of the institution thereof, hold harmless and indemnify Seller from and against all losses, damages, liabilities and expenses arising out of such action, suit or proceeding. Buyer may, if so notified, participate in, and, to the extent it shall determine, assume the defense thereof and may in its sole discretion effect a settlement thereof on such terms as Buyer may deem advisable. In any event, Seller shall furnish to Buyer such information relating to such action, suit or proceeding, as Buyer shall reasonably request for use in defending the same.

15. **FORBEARANCE - NO WAIVER.** Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights should such defaults continue; nor shall such forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.

16. **SEVERABILITY.** If any provision of this offer or any agreement resulting herefrom is unenforceable, void, voidable or invalid, the offer or agreement shall be ineffective only to the extent of such provision and the enforceability or validity of the remaining provisions shall not be affected thereby.

17. **ASSIGNMENT.** This offer and any other agreement resulting herefrom may not be assigned by Buyer, in whole or in part, except with the written consent of Seller.

18. **APPLICABLE LAW.** This offer and any agreement resulting herefrom shall be interpreted, and the rights and liabilities of the parties here determined in accordance with the laws of the State of Illinois. In addition to the rights and remedies reserved herein, the parties shall have all rights and remedies conferred by law.

19. **ERRORS.** Seller reserves the right to correct clerical or stenographic errors or omissions.

20. **COMPLETE AGREEMENT.** This offer, upon acceptance, supersedes all previous agreements, if any, between the parties, and constitutes the sole, final and entire contract between them with respect to the Merchandise. No change, amendment, modification or waiver of the terms and conditions set forth herein shall be effective unless made in writing signed by both parties.