

## TERMS AND CONDITIONS OF SALE (OR CONSIGNMENT)

- Scope of Agreement:** These terms and conditions and those stated on the Aeroflex, USA, Inc. ("Seller") Order Confirmation or Invoice, and Consignment Agreement, where applicable, govern the sale of the goods or materials ("Product"), to the buyer ("Buyer"), and/or the consignment of the Product, where applicable to Buyer as consignee, and constitute the final and entire agreement between Buyer and Seller regarding the Seller's sale and/or consignment of Product to Buyer (collectively, the "Agreement"). The Agreement supersedes all prior representations, quotations, proposals, orders, invoices, agreements or understandings, oral or written. The terms and conditions of sale set forth in the Agreement shall govern in the case of any inconsistency or conflict between this Agreement and the terms of any order from Buyer. NO modification of this Agreement is binding on Seller unless made in writing, signed by Seller's authorized representative. If the terms and conditions stated herein shall conflict with provisions of any Consignment Agreement between Seller and Buyer, the Consignment Agreement shall govern with respect to consigned Product only.
- Price:** Buyer shall purchase the Product in accordance with the prices established and published by Seller from time to time provided that the same shall be in effect at the time of sale. Seller reserves the right to establish, revise or delete at its sole discretion, from time to time, any and all Product and/or prices published on Seller's price list.
- Payment:** Buyer shall make full payment, in cash, by check or other means of payment making funds immediately available to Seller, of each invoice submitted by Seller for sales of the Product to Buyer (an "Invoice"), all in accordance with the payment terms appearing on such invoice, unless otherwise agreed in writing by Buyer and Seller. Receipt of any check shall be provisional payment only and shall not constitute final payment until Seller has received cash or collected funds in the full amount thereof. Failure to pay any Invoice on or before its due date shall constitute a breach of these terms and conditions and in such event, all other Invoices of Seller to Buyer shall become immediately due and payable, irrespective of terms, and the Seller may withhold all subsequent deliveries until the Buyer's account is settled and paid in full. Acceptance by the Seller of less than full payment shall not be a waiver of any of Seller's rights and Buyer shall be liable for all costs of collection, to include attorneys' fees and litigation and arbitration expenses, including discovery and expert witness expenses, incurred by Seller in collecting payments due under any Invoice. If, in Seller's judgment, Buyer's financial situation so indicates, Seller may suspend or alter the credit or payment terms of Buyer's account or require payment before shipment, delivery or manufacture. Buyer shall pay Seller amounts due under each Invoice in currency of the United States of America. Any tax applicable to any sale, shipment, transportation or use of the Product shall be added to and paid by the Buyer with the price. No representative of the Seller is authorized to accept any payment for any Product sold to Buyer by Seller. Amounts not paid in accordance with these terms and conditions as specified in this Agreement shall incur late charges of 1.5% per month on the total amount due at Seller's sole discretion.
- Security Interest:** Seller is hereby granted and retains a purchase money security interest in the Product covered by each Invoice to secure receipt by Seller, in cash or collected funds, of the full purchase price thereof, together with all charges in accordance with established prices and charges as referred to in this Agreement and in the Invoice. Seller shall have the right to retake possession of and resell each Product until the same shall have been fully paid for by Buyer.
- Delivery:** Delivery shall be F.O.B. destination. Accordingly, Seller shall bear the risk of loss, including insurance, during shipment. Seller will attempt to meet delivery dates requested by Buyer, however, failures or delays of shipment caused by Buyer or arising from any cause beyond Seller's control, including, without limitation, labor controversies, embargoes, government regulations, government orders, government shutdowns, accidents, state of war, riots, fires, earthquakes, storms, pandemics, epidemics, failures of sources of supply or delay in receiving machinery or materials ("*Force Majeure* Conditions") shall not be chargeable to Seller; nor shall Seller have liability in any event for any consequential or special damages.
- Taxes and Other Costs:** Buyer is solely responsible and liable for all taxes, duties, demurrage, freight charges, insurance premiums and like charges assessed upon the sale, storage, handling, shipping and transit of the Product delivered to it.
- Orders; Cancellation:** Buyer may not cancel, alter or suspend delivery on any order it submits to Seller for the Product except with Seller's written consent, signed by its officer at Sweetwater, TN, which consent may be withheld by Seller in its sole and absolute discretion. A reasonable delay on Seller's part to make any shipment shall not be grounds for cancellation of the order. No cancellations of special ordered Product shall be permitted after production pursuant to the order shall have commenced and, no cancellation of an order from Seller's regular inventory shall be permitted after shipment of goods. Each shipment shall be a separate sale and, upon Buyer's failure to give shipping instructions promptly, Seller may cancel the order or suspend delivery at its sole option.
- Returns:** Returns without Seller's written permission will not be accepted for credit. All returned Product must be new, in not less than case quantities (no partial cases accepted) and in unopened and undamaged original packaging, in saleable condition, with transportation charges prepaid to Seller's facilities. No credit will be allowed for return of Product of special design, finish or size, or for any Product retained more than 60 days after shipment. A service charge of 25% of the price (minimum \$100.00) will be paid by Buyer to cover handling and inspection of any Product returned.
- Arbitration:** Except for actions by Seller to collect amounts due and payable to Seller, any controversy, claim or dispute arising out of or relating to the terms and conditions of sale herein or the breach or the default thereof, shall be determined finally by arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association. The arbitration shall take place in Knoxville, TN and the American Arbitration Association shall be requested, insofar as practicable, to limit its panels to persons having expertise in the subject matter of the controversy, claim or dispute. The arbitration award shall be final, binding on the parties, not subject to any appeal and shall deal with the question of the cost of arbitration and all matters related thereto. Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or any order of enforcement thereof, as the case may be.
- Indemnity:** Buyer shall indemnify Seller for all expenses, loss or liability, including without limitation, Seller's reasonable attorneys' fees, litigation or arbitration expenses, including discovery expenses and expert witness fees, resulting from or arising with respect to (herein, collectively, the "Obligations") (a) any claim of infringement of patents, design patents, copyrights, or trademarks, or unfair competition in connection with any goods Seller shall prepare wholly or partly in accordance with Buyer's design or specifications; (b) Buyer's breach of this Agreement and Seller's collection of any unpaid amount from Buyer or enforcing this Agreement; and (c) Buyer's negligence, willful acts, commissions and/or breach of this Agreement, including any third-party claims for personal injury or property damage, regardless of the nature of the claim or whether Seller or the Product is alleged to be at fault.
- Governing Law; Venue:** This agreement and the sales of the Product shall be governed by the laws of the State of Tennessee, without regard to its conflicts of law rules; venue shall be solely in the state or federal courts located in Knoxville, TN.
- Limited Warranty:** Seller warrants to the original purchaser of the warranted Product manufactured by Seller, subject to normal use and so long as the Product shall be installed and used in accordance with Seller's instructions, that such Product shall be free from original defects in material or factory workmanship for a period of 12 months from the date of installation. This **Limited Warranty** is IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE WHATSOEVER, OR FITNESS FOR A PARTICULAR PURPOSE, EACH OF WHICH IS HEREBY EXPRESSLY DISCLAIMED. Seller makes no warranty, expressed or implied, with regard to the end-product manufactured by Buyer. Buyer agrees that it will not alter, amend or add to Seller's Limited Warranty. If Buyer desires to offer additional warranties or make any representation on its own, such warranties and/or representations will clearly state that they are Buyer's additional warranties and not those of Seller. INASMUCH AS SELLER HAS NO CONTROL OVER INSTALLATION DESIGN, INSTALLATION WORKMANSHIP, ACCESSORY MATERIALS, OR CONDITIONS OR APPLICATION, SELLER DOES NOT WARRANT THE PERFORMANCE OR RESULTS OF ANY INSTALLATION CONTAINING THE PRODUCTS. THIS WARRANTY DISCLAIMER INCLUDES ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Additional conditions, limitations and procedures exist with respect to Seller's **Limited Warranty**, all of which are completely stated at [www.aeroflexusa.com](http://www.aeroflexusa.com); Buyer represents and warrants to Seller, by ordering or accepting Product under these Terms and Conditions, that Buyer has read and consents fully to all terms, conditions, limitations and procedures with regard to Seller's **Limited Warranty** as from time to time may be stated at [www.aeroflexusa.com](http://www.aeroflexusa.com).
- Limitation of Remedy:** In the event of any claimed or actual breach of warranty asserted within the warranty period, Buyer's SOLE REMEDY under the above Limited Warranty in any action, whether based upon warranty, contract, negligence, strict/products liability or otherwise, is LIMITED TO THE REPAIR OR REPLACEMENT AT SELLER'S OPTION OF ANY DEFECTIVE PRODUCT SOLD BY SELLER, TRANSPORTATION PREPAID, F.O.B., POINT OF INSTALLATION. In no event shall Seller be liable to Buyer, nor to any third-party claiming through Buyer, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF PROPERTY, PERSONAL INJURY, LOSS OF BUSINESS, LOSS OF PROFITS, OR ECONOMIC LOSSES) NOR FOR PUNITIVE, STATUTORY, OR EXEMPLARY DAMAGES, WHETHER IN NEGLIGENCE, WARRANTY, STRICT LIABILITY OR OTHERWISE.
- Severability; Headings; Non-Waiver:** Should any provisions of this Agreement, or portions thereof, be found invalid by any court of competent jurisdiction, the remainder of this Agreement shall nonetheless remain in full force and effect. Headings used in this Agreement are for convenience of reference only and in no event shall such headings be used to interpret this Agreement or to alter the express provisions hereof without reference to such headings. If Seller shall waive or shall fail to enforce any one or more provisions of this Agreement from time to time, such waiver or non-enforcement shall not constitute Seller's waiver or agreement not to enforce the same provision(s) or any other provisions of this Agreement with respect to facts or circumstances that shall or may arise in the future, regardless of whether such future facts or circumstances are similar to or related to the facts or circumstances to which Seller's past waiver or agreement not to enforce this Agreement may relate.