

# Terms and Conditions of Sale for FEIG ELECTRONICS Inc.

September 2019 edition

## 1. Purchase of Products

(a) All shipments, services, sales and quotations between FEIG Electronics Inc. ("Seller") and the purchaser named on the reverse side hereof ("Purchaser") of FEIG's Product Line ("Products") shall be subject to these Terms and Conditions of Sale (the "Terms"). Purchaser acknowledges receipt hereof and accepts the Terms.

ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN ANY RESPONSE HERETO BY PURCHASER OR IN PURCHASER'S INITIAL ORDER ARE HEREBY REJECTED BY SELLER WITHOUT NEED OF FURTHER NOTICE OF REJECTION AND SHALL BE OF NO EFFECT NOR IN ANY CIRCUMSTANCES BINDING ON SELLER.

(b) Each order of Products shall be in writing and no order of Purchaser shall be binding on Seller until the earlier of (i) shipment to Purchaser of Products or (ii) transmittal of a written acceptance by Seller.

(c) Purchaser may not cancel any order after it has become binding pursuant to subsection (b) above. Seller may cancel all accepted orders and deliveries of Products if (i) Purchaser makes an assignment for the benefit of creditors, (ii) becomes party to a voluntary or involuntary proceeding of insolvency, bankruptcy or reorganization, (iii) generally becomes unable to pay its debts as they become due, (iv) fails to remit payment to Seller in accordance with the terms hereof or under any other agreement between Seller and Purchaser, or (v) breaches any other term, provision or condition contained in these Terms.

(d) All references in sales brochures, technical data sheets and offers as to specifications, price and other details of the Products are approximate and shall not be binding on the Seller unless expressly agreed to in writing.

(e) Purchaser acknowledges that Seller's acceptance of any purchase order is dependent on Seller's prior approval of Purchaser's credit.

Purchaser acknowledges that Seller may demand assurances of Purchaser's ability to pay by requesting such trade or banking references or a letter of credit or such other information as deemed adequate by Seller.

## 2. Delivery

(a) All shipments are F.O.B. Seller's facility set forth on the reverse hereof. Seller may, at its option, prepay freight charges and seek reimbursement from Purchaser. Risk of loss of the Products passes to the Purchaser at the shipping point.

(b) All dates of delivery set forth in an accepted order are approximate and non-binding on Seller.

(c) If Purchaser requests any modification of the order after Seller's acceptance, Seller shall have the right to extend the delivery time

period as reasonably needed to complete Purchaser's changed order and to adjust the terms of sale and purchase price in its sole discretion.

### **3. Acceptance**

Purchaser shall inspect all Products immediately following arrival thereof at the destination, and shall give written notice to Seller within five (5) days of any claim that the Products are nonconforming, provided that a reasonable inspection should have revealed such nonconformity.

If Purchaser shall fail to give such notice within five days, Purchaser is deemed to have accepted the Products.

### **4. Prices**

(a) All prices quoted by Seller are in U.S. US Dollars and exclusive of packaging, handling, freight, insurance, taxes, tariffs.

Payment terms shall be thirty (30) days net unless otherwise specified in an applicable invoice. If an invoice is not paid in full within thirty (30) days following the date of invoice, Seller shall be entitled to charge interest on the delinquent invoice in the amount of (i) 18% per annum or (ii) the highest rate permitted by applicable law. The foregoing shall be in addition to and not in lieu of any other remedies Seller may have at law or in equity for such delinquency.

(b) Purchaser shall have no right of offset by virtue of any claim against Seller, unless Seller has acknowledged the validity and amount of such claim in writing.

(c) Prices for Products are subject to change without notice.

### **5. Warranties**

(a) Seller warrants only that the Products shall be free from defects of materials and workmanship for a period of 12 months after the date of delivery ("Warranty Period"). If, within the Warranty Period, (i) the Purchaser discovers any defects in the materials or workmanship of the Product and (ii) notifies the Seller in writing of such defects and returns the defective Product to Seller, Seller shall, at its option, repair or replace the defective Product or issue a refund for the purchase price thereof.

(b) This warranty shall not apply to any of the following: (i) Products that have been altered or repaired by anyone other than Seller's approved personnel; (ii) Products that have been damaged by circumstances beyond the reasonable control of Seller; (iii) Products that have been incorrectly installed or improperly used or maintained by Purchaser; or (iv) Products that have been subjected to conditions of use and or maintenance not in conformity with Seller's instructions regarding the Products.

(c) THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

## **6. Limitation of Liability**

IN ALL EVENTS, THE LIABILITY OF SELLER HEREUNDER, WHETHER BASED IN TORT, BREACH OF CONTRACT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT IN QUESTION OR WITH RESPECT TO WHICH SUCH BREACH, DEFAULT, OR NEGLIGENCE IS CLAIMED. PURCHASER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES.

## **7. Security Interest**

Purchaser hereby grants Seller a security interest in the Products and all proceeds thereof to secure Purchaser's obligations to Seller. As a secured party, Seller shall be entitled to exercise all rights and remedies available to a secured creditor under applicable law. Purchaser agrees to execute and deliver to Seller any and all documents necessary to perfect Seller's security interest, including all financing statements. Purchaser further appoints Seller as Purchaser's attorney in fact for the purpose of executing all documents on Purchaser's behalf, which are necessary to perfect and maintain Seller's security interest in the Products.

## **8. Protection of Trade Secrets and Confidential Information**

Except as required by law, the Purchaser shall not disclose any of the terms or conditions of an accepted order, including price terms, to any third party for any reason whatsoever. All specifications, drawings, models, samples, designs, technical information or data, written, oral or otherwise, furnished by or on behalf of Seller shall remain the property of Seller, whether paid for by Purchaser or not, and shall be returned (together with all copies) promptly upon Seller's request. Such information shall be treated as confidential, and shall not be used, disclosed or reproduced by Purchaser, except as required in the course of performance hereunder.

Purchaser's obligations of confidentiality hereunder with respect to each item of confidential information shall extend for a period of three (3) years from the date of Seller's acceptance of the last order to which the items of confidential information in question pertain; provided, however that Purchaser's obligations of confidentiality hereunder with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law. For purposes hereof, the confidentiality obligations embodied herein do not extend to any information, which, at the time of disclosure, was (i) already known or independently developed by Purchaser; (ii) in the public domain through no wrongful act of Purchaser; or (iii) received by Purchaser from a third party who was free to disclose such information. The parties acknowledge that the rights of Seller hereunder are in addition to those rights Seller may have under common law or applicable statutes for the protection of trade secrets.

## **9. Intellectual Property Rights**

(a) Purchaser may not use Seller's trademarks, service marks or Seller's other intellectual property rights without Seller's prior written consent.

(b) Seller warrants that it does not possess knowledge that the Products infringe on any third party intellectual property rights. Seller makes no warranty and shall not be liable for any damages of Purchaser resulting from Seller's unintentional infringement of third party intellectual property rights. Purchaser acknowledges that any claims brought hereunder are limited by Section 5 of these Terms.

(c) Purchaser shall notify Seller promptly in writing of any claims brought against the Purchaser that the Products infringe third party intellectual property rights.

## **10. Arbitration**

Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be submitted to and be finally resolved by arbitration, to be conducted by the American Arbitration Association ("AAA"), with such arbitration to be held in Atlanta, Georgia in accordance with the AAA's Commercial Arbitration Rules then in effect. Each party hereby irrevocably agrees that service of process, summons, notices, as other communications related to the arbitration procedures shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party, or if actually received by the other party. The arbitration shall be conducted by one arbitrator, as selected by the AAA. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Except as may be provided to the contrary herein, each party hereto shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator. Notwithstanding the foregoing, Seller may seek injunctive relief against Purchaser at any court of proper jurisdiction with respect to any and all preliminary injunctive or restraining procedures pertaining to these Terms or the breach hereof.

## **11. Miscellaneous**

(a) Notwithstanding anything to the contrary, Seller shall not be liable for any delay or failure to perform hereunder when such failure or delay is, directly or indirectly, caused by, or in any manner arises from fire, floods, accidents, civil unrest, acts of God, war, terrorism, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, breakage of machinery or apparatus, transportation delays, or any other cause or causes (whether or not similar in nature to any of those hereinbefore specified) beyond its control.

(b) Purchaser may not assign this contract without the express prior written consent of Seller.

(c) Except as otherwise expressly provided herein or in a written document, signed by Seller

and Purchaser, this document and attachments and exhibits thereto constitute the entire agreement between Seller and Purchaser with respect to the subject matter herein contained and all prior agreements and communications between Seller and Purchaser, whether oral or written, are superseded by this Agreement.

(d) No modification, limitation, waiver or discharge of this Agreement or of any of its terms shall bind Seller unless in writing and signed by a duly authorized employee of Seller. The failure of Seller to insist, in one or more instances, on performance by Purchaser in strict compliance with the terms and conditions hereof shall not be deemed a waiver or relinquishment of any right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

(e) All notices required hereunder shall be in writing and sent by first class mail or by telefax or written confirmation to such addresses as stated on the reverse side hereof.

(f) This Agreement shall be governed by, and construed, interpreted and enforced under the laws of the State of Georgia without giving effect to conflict of laws principles.

(g) In case any conditions of this Agreement should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of this Agreement shall not be affected thereby.