



TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (the "Terms"), including the terms on the reverse side hereof, constitute the full and final expression of the contract for products or services as described in the written or oral quotation between Motion Micro Solutions Inc. (hereinafter "MMS") and the Purchaser, and supersede all prior quotations, purchase orders, correspondence or communications whether written or oral between "MMS" and Purchaser. Notwithstanding any contrary language in the Purchaser's purchase order or other expression, the parties shall be bound by these Terms. PERFORMANCE OF THE ANTICIPATED COMMERCIAL TRANSACTION IS UNDERTAKEN SOLELY BASED ON THE ACCEPTANCE OF THESE TERMS AND ANY ADDITIONAL TERMS OR MODIFICATIONS TO THESE TERMS PROPOSED BY THE PURCHASER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY MMS. No contract shall exist except as herein provided. No statement, representation or warranty not contained herein shall be binding on MMS unless made in writing by an officer of MMS. Prior dealings, usage of the trade or a course or performance shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

1. **Orders.**
 - 1.1. All orders for the purchase of products or services received are subject to acceptance by an authorized representative of MMS. All orders must be firm commitments giving either complete item description (product numbers where applicable), or customer part numbers, and include prices, quantity, and shipping instructions. Typographical and clerical errors in quotations, orders, and acknowledgements are subject to correction.
2. **Prices.** All prices are subject to change without notice. Written quotations expire thirty (30) calendar days from the date of quotation unless withdrawn sooner. Verbal quotations expire within twenty-four (24) hours after they are made and are required to be reduced to a writing to be confirmed and binding. All prices are quoted exclusive of all delivery charges, federal, provincial, state or local sales, excise, us or similar taxes, cost of insurance, and cost of special packaging requested by Purchaser. Any such charges which MMS prepays will be payable by the purchaser as set forth in the invoice for the products. MMS assumes no liability for import duties or other taxes imposed by any foreign country.
3. **Credit.** Purchasers not having established credit ratings with MMS should send satisfactory credit information with first order or remit a certified cheque or bank draft or accept C.O.D. shipment to avoid delay in filling orders. MMS reserves the right at any time to seek updated credit information and to cancel credit terms and ship C.O.D. when credit information or payment performance are, in MMS's sole judgment, insufficient to extend credit. Letters of Credit must be irrevocable and confirmed by a Canadian bank acceptable to MMS.
4. **Terms of Payment.** Terms of payment to a Purchaser of satisfactory credit worthiness are as follows:
 - 4.1. An invoice will be submitted by mail to Purchaser when the product ships.
 - 4.2. Invoice amount is due 30 days after the date of invoice.
 - 4.3. An Invoice will be submitted and is payable as referenced in 4.2 above for each partial shipment.
 - 4.4. MMS reserves the right at any time to require full or partial payment before proceeding with a contract of sale if, in its sole and absolute discretion, the financial condition of Purchaser shall not justify the terms of payment specified.
 - 4.5. If Purchaser defaults when payment is due, then the whole contract price shall become due and payable upon demand, or MMS, at its option, without prejudice to other lawful remedies, may defer delivery or cancel the contract.
 - 4.6. Charges for samples are payable net 30 days after samples are delivered.
 - 4.7. Purchaser shall pay interest on any late payments at the rate of 1.5% per month in advance. Additionally, if any payment is more than fifteen (15) days past due, MMS reserves the right to suspend performance of any or all of its obligations hereunder. In the event MMS, in its sole discretion, determines it necessary to take actions to collect unpaid amounts, Purchaser will reimburse MMS for all costs associated with such actions.
 - 4.8. Any other terms of payment shall be as specified by MMS at time of quotation.
5. **Security Interest.** MMS retains title in each of the products old to Purchaser and all replacements, products and proceeds thereof to secure payment of the Purchaser's obligations. This title will be retained until the Purchaser's obligations are paid in full. The Purchaser agrees MMS will have the right to file financing statements or other documentation pursuant to applicable law to secure evidence or perfect MMS' title in the products. Purchaser hereby appoints MMS as its agent to complete and execute such documentation on its behalf. The Purchaser also agrees that MMS will have the right to invoice the Purchaser and the Purchaser will pay all fees, taxes and assessments associated with the filing of the financing documentation. A copy of the order from the customer, acceptance by MMS and these terms and conditions shall be sufficient as a financing statement and may be filed as a financing statement.
6. **Shipment and Risk and Loss.** All shipments are FCA (MMS's applicable shipment facility as stated in MMS's acknowledgment) (Incoterms 2010) point of shipment unless otherwise stated. Risk of loss or damage to the product shall pass to Purchaser at the point of shipment.
7. **Packaging.** MMS's price includes the cost of standard packaging for shipment in the United States or in Canada. Additional charges may be imposed for special domestic or overseas packaging or special marking performed at purchaser's request and agreed to by MMS. The cost of such items are determinable only upon completion, and will appear as a separate item on MMS's invoice.
8. **Transportation**
 - 8.1. MMS transports its products by United Parcel Service, Federal Express, or similar common carrier. Transportation charges are payable by Purchaser. In absence of direction by Purchaser before date of shipment, MMS will select the method of shipment. If Purchaser prefers a certain method or forwarding agent to handle the shipments, complete instructions must be given to MMS before delivery. If MMS prepays costs related to shipments, complete said costs will appear as an item on invoice to Purchaser.
 - 8.2. All claims for loss, breakage and damage (obvious or concealed) should be made to carriers, but MMS will render Purchaser reasonable assistance in securing satisfactory adjustment of such claims.
 - 8.3. Claims for shortage or other errors must be made in writing to MMS within ten (10) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Purchaser.
9. **Delivery** All stipulated delivery or shipment dates given by MMS are estimates only. MMS reserves the right to make deliveries in instalments and the contract shall be severable as to any such instalments. Delay in delivery or other default of any instalments shall not relieve Purchaser of its obligation to accept and pay for remaining deliveries. IN NO EVENT SHALL MMS BE LIABLE



FOR INCREASED MANUFACTURING COSTS, LOSS OF PROFITS OR GOODWILL, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF DELAY IN SHIPMENT OR NONSHIPMENT.

- 10. Cancellation and Modification.**
- 10.1.** No cancellation by Purchaser for default shall be effective unless and until MMS shall have failed to correct such alleged default within thirty (30) days after receipt by MMS of a written notice specifying such default. MMS shall not be liable for any delay in or failure of performance hereunder due to any cause beyond its control. Such causes include, but are not limited to, inability to obtain or delay in obtaining the products or the necessary materials or component parts, fire, strike, insurrection, riot, flood, epidemic embargoes, quarantine restrictions, acts of God, war, acts of purchaser, interruption of transportation, and civil unrest. The delivery schedule hereof shall be considered extended by a period of time equal to the time lost because of any delay which is excusable under this clause. In the event MMS is unable wholly or partially to perform because of any cause beyond its control, MMS may terminate the contract without any liability to Purchaser.
- 10.2.** Cancellation of orders within 60 days of scheduled ship dates are subject to full payment of the selling price unless otherwise specified by MMS, provided that orders that are specified by MMS as non-cancellable or non-refundable may not be cancelled by the Purchaser.
- 10.3.** Purchaser may reschedule delivery dates only if MMS agrees. Upon such agreement, a maximum of two reschedules are permitted and will be subject to a 15 % additional charge for each event of rescheduling. Any order rescheduled and later cancelled is subject to a 100% cancellation fee.
- 10.4.** Unless otherwise agreed and confirmed in writing, items scheduled for shipment are not subject to revision, rescheduling or termination within thirty (30) days of scheduled delivery.
- 11. Returns.** Products will be accepted for return only upon written authorization by MMS, and issuance of a Return Merchandise Authorization ("RMA") number. Shipments without an RMA prominently displayed on the shipping package will be refused. RMA's will be issued by MMS only to cover units to be accepted for evaluation of alleged defect, or units which MMS has otherwise agreed with the Purchaser to accept.
- 12. Warranties**
- 12.1.** Purchaser shall be entitled to all applicable manufacturers' warranties, representations and indemnities, subject to their terms, assignability and enforceability. Other than the manufacturer's warranties, the products sold by MMS under this Agreement are sold without any warranty or representation. All statements which have been made by any representative of MMS, whether oral or written, regarding the products are mere expressions of opinion and do not create any expressed or implied warranties. NO WARRANTY OR REPRESENTATION TO PURCHASER FROM MMS IS EXPRESSED OR IMPLIED. MMS SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No Employee or representative of MMS shall have any authority to create warranties on behalf of MMS.
- 13. Government Contract Conditions.** If the products or services hereunder relate to a contract with the Government of Canada, clauses appearing or referred to therein, which are intended to be binding on MMS, shall be subject to MMS's review and prior written consent.
- 14. Confidentiality** Purchaser agrees that the prices, terms, and conditions of this Agreement hereto are confidential information. Purchaser will not disclose this confidential information to persons not a party to this Agreement without the express written permission of MMS.
- 15. Limitation of Liability**
- 15.1.** Purchaser is solely responsible for selecting products for purchase under this Agreement and determining the fitness of such products for Purchaser's needs. Furthermore, Purchaser assumes full responsibility for the overall effectiveness and efficiency of the operating environment in which the products are to function.
- 15.2.** MMS shall not be liable for delay in, or inability to, perform its obligations under this Agreement if such delay is caused by anything beyond MMS's reasonable control, including, but not limited to, strike, riot, war, government regulations, flood, product shortage, unavailability of transportation, or any other unforeseeable or unavoidable event.
- 15.3** MMS SHALL NOT, UNDER ANY CIRCUMSTANCE, BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OF SERVICE, LOSS OF DATA OR LOSS OF PRODUCTS, TIME OR BUSINESS. EVEN IF MMS HAS KNOWLEDGE OR SHOULD HAVE KNOWLEDGE OF PURCHASER'S PURPOSE FOR OR USE OF THE PRODUCTS. IN ADDITION, MMS'S AGGREGATE LIABILITY FOR ALL CLAIMS FOR DIRECT DAMAGES UNDER THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE LESSER OF THE PRICE OF THE PRODUCT EVIDENCED BY MMS'S ACCEPTANCE OR FIFTY THOUSAND DOLLARS.
- 15.4** In the event the products are developed and/or manufactured in accordance with the customer's specifications, directions or other instructions and information (the "Customer Information"), Customer agrees to indemnify MMS from and against all actions, demands, claims, proceedings, losses or costs resulting from MMS's and/or the manufacturer(s)' reliance or conformance to such Customer Information.
- 16. Waiver.** The failure of MMS to insist, in any one or more instances, upon the performance of any of the terms or conditions of this contract or the failure of MMS to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right thereunder and shall not affect MMS's right to insist on strict performance and compliance with regard to any unexecuted portions of this contractor future performance of these terms and conditions.
- 17. General Terms and Governing Law**
- 17.1.** If any provisions or portions of these Terms and Conditions of Sale are invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted.
- 17.2.** Purchaser acknowledges that he has read and understands these Terms and Conditions of Sale and agrees to be bound by them and, further, agrees that they are the complete and exclusive statement of the agreement between the parties and supersede all proposals, oral or written and all other communications between the parties relating to the subject matter hereof.
- 17.3.** Any contract of sale between MMS and Purchaser shall be governed by and construed according to the laws of the Province of Ontario, Canada.
- 17.4.** The parties hereto have required that these Terms and Conditions of Sale as well as any notice, document or proceedings relating hereto be written in English. Les parties aux présentes ont exigé que les termes et conditions de vente ainsi que tout autre avis, document ou procédure s'y rapportant soit rédigé en anglais.