

Terms & Conditions

ELECTRONICS & INNOVATION, LTD.

The following terms and conditions apply to all sales by Electronics & Innovation, Ltd., except to the extent that it agrees otherwise in writing.

Definitions:

Seller: Electronics & Innovation, Ltd.

Buyer: Any party who enters into a contract with Seller by which Seller agrees to produce, assemble, repair or lease goods for Buyer.

1. **Price:** The price stated in Seller's quotation, unless Seller otherwise agrees in writing. However, the price does not include sales, use excise or other taxes or customer duties, costs of nonstandard packaging or insurance. Buyer shall pay such taxes and costs directly or reimburse Seller.
2. **Shipment:** Unless otherwise expressly stated herein, the goods shall be shipped f.o.b. Seller's facility. Title and risk of loss shall pass to Buyer upon delivery to the carrier. Unless otherwise directed by Buyer before the date of shipment, Seller may select any reasonable method of shipment.
3. **Delay:** Force Majeur. Delivery dates are approximate, dating from the receipt of Seller's PO, and Seller shall have no liability to Buyer for Seller's delay or default in delivery due to strikes, secondary boycotts, riots, wars, accidents, fires, floods, explosions, vandalism, government embargoes, priorities or regulations, transportation delays, shortage of labor, fuel, materials, supplies, power transportation facilities or tooling capacity or other similar causes beyond Seller's reasonable control. Under no circumstances shall Seller have any liability for penalties or other consequential damages of any kind resulting in whole or part from Seller's delay in delivering or failure to deliver any products to Buyer as agreed.
4. **Payment:** Unless otherwise agreed, payment terms shall be net 30 days. Late payments shall be subject to an interest charge of the lower of 1 1/2% per month or the highest interest rate permissible by law, plus collection and attorney's fees. Buyer shall make no set-off deduction without Seller's written consent.
5. **Warranty:**
 - Seller warrants that all goods manufactured by Seller will be free from defects in materials and workmanship under normal operating conditions for a period not to exceed 36 months.
 - The warranty set forth above is inapplicable to and excludes any defect, damage, or malfunction resulting from (i) normal wear and tear, erosion, corrosion, (ii) misuse, negligence, or modification of the goods or any component by Buyer or its representative, (iii) repair service provided by third parties, (iv) failure by Buyer to follow installation or operating manuals or instructions, (v) failure of parts or

components or services not provided by Seller, or (vi) any other cause outside Seller's reasonable control. This warranty will be voided by installation of unauthorized components into Seller's products.

- Replacement products may be refurbished or contain refurbished materials. If Seller, in its sole discretion, is unable to repair or replace the defective goods, it will refund the purchase price of the goods. Proof of date of delivery of the returned goods is required.
 - THE WARRANTIES AND REMEDIES STATED ABOVE BY SELLER ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED. ANY AND ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD PARTY RIGHTS ARE EXPRESSLY EXCLUDED.
6. **Liability:** The remedies set forth in these terms and conditions are exclusive, and Seller's liability under this contract shall in no event extend to indirect, punitive, incidental or consequential damages which Buyer may suffer or incur in connection with the contract between Buyer and Seller, including, but not limited to loss of profits, damages or losses resulting from Buyer's inability to fulfill contracts with third parties or loss of damages or losses resulting from Buyer's inability to fulfill contracts with third parties or loss of goodwill. Seller's liability under the contract between Buyer and Seller under any theory of law shall in no event exceed the purchase price of the goods in question.
 7. **Returns:** No order may be cancelled, delivery date changed nor any goods NOR any goods returned to Seller without Seller's express written consent.
 8. **Assignment:** Without the express written consent of the other party, neither party may assign any of its rights or obligations in connection with the sale of the goods.
 9. **Changes, Modification, Waiver:** No change in specifications, drawings or delivery for the goods may be made without the prior written consent of Seller. These terms may be modified only in writing signed by an authorized representative of the Seller.
 10. **Notice:** Any notice to be provided to Seller hereunder must be in writing and transmitted by U.S. First Class Mail, or by facsimile with copy by U.S. First Class Mail, addressed to: Electronics & Innovation, Ltd., 150 Research Blvd., Rochester NY 14623. Attention: Sales Manager, Facsimile: (585) 214 0580.
 11. **Governing Law:** The contract between Seller and Buyer shall be governed by the laws of the State of New York. Buyer and Seller consent to the jurisdiction of the Courts of the State of New York and any litigation involving the contract shall be commenced only in the State of New York.
 12. **Entire Agreement:** The contract between Buyer and Seller, including these terms and conditions, constitutes the entire agreement between the parties with respect to its subject matter, and any prior contemporaneous communications or agreements are hereby superseded. The contract may not be terminated or modified by any party unless in writing, signed by both Seller and Buyer.