

# FRONTIER ELECTRONICS, CORP. STANDARD TERMS AND CONDITIONS

**General:** These terms and conditions supersede all prior communications between the parties on the subject hereof, whether oral or written, and contain the entire agreement of the parties with respect to the subject purchase by the Buyer from Frontier Electronics, Corp. (FEC). All Buyer purchase orders are subject to these terms and conditions ("Terms") and any FEC order quotation is as well subject to these Terms. FEC specifically objects to and rejects any different or additional terms and conditions in Buyer's printed purchase order(s) or associated form and/or documents and such terms and conditions shall not be binding on FEC unless otherwise agreed in writing by an authorized representative of FEC. These Terms, together with the FEC order quotation shall constitute the entire agreement between FEC and Buyer with respect to any Buyer purchase order and the products provided hereunder. FEC, in its sole and absolute discretion, shall have the right to correct any clerical errors or omissions to orders placed by Buyer and processed by FEC. FEC's failure to insist, in one or more instances, upon the performance of any of these Terms shall not be construed as a waiver or relinquishment of FEC's right to such performance of such Terms, and Buyer's obligations with respect thereto shall continue in full force and effect.

**Cancellation or Termination:** If the Buyer cancels or terminates its order in whole or in part, the following charges apply; (1) the price for finished products, and (2) Cost of work in process. "Cost" is defined to include material, direct labor, overhead, material handling, selling, general and administrative expenses and profit.

**Delivery-Risk of Loss and Claims:** "Delivery" of product shall occur EXW-FEC's Simi Valley, CA location and Buyer shall pay all shipping costs from that point. Responsibility of FEC shall cease and title and risk of loss or damage to products shall transfer to Buyer upon FEC's delivery to and receipt by a common carrier. Buyer shall bear sole responsibility for the timely and proper submission to the appropriate carrier or other responsible party of all claims for loss of or damage to products occurring after Delivery.

**Limited Warranty:** FEC warrants that its product(s) will be free from defects in workmanship or materials at the time of Delivery, subject to the provisions of this limited warranty. Buyer must notify FEC in writing of any claims by Buyer that any product fails to conform to this warranty within ninety (90) days after Delivery of such product and must in such notice describe the alleged non-conformity. Buyer shall retain allegedly non-conforming product for inspection by an authorized representative of FEC or, if requested by FEC, shall return such products to FEC promptly upon receiving FEC's written return authorization and instructions. If product(s) are found by FEC to fail to conform to this warranty, FEC's entire liability and Buyer's exclusive remedy whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering such products shall be correction of defects by repair, replacement, or credit, at FEC's discretion. Refurbished product may be used to repair or replace the product. Buyer shall have no claim to any product which has been replaced. FEC assumes no, and expressly disclaims, liability with respect to (a) defects caused by modification, repair, installation, operation or maintenance; (b) damage not caused by FEC; or, (c) negligent or other improper use of the product. No agent, distributor, or representative is authorized to make any warranties on behalf of FEC or to assume for FEC any other liability in connection with any product. WITH RESPECT TO ALL PURCHASES OF PRODUCT BY BUYER FROM FEC, THE ABOVE WARRANTY IS THE ONLY WARRANTY MADE BY FEC TO BUYER AND REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER OBLIGATIONS OF FEC, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE SPECIFICALLY DISCLAIMED AND EXCLUDED BY FEC. The foregoing sets forth the Buyer's sole remedy in connection with any warranty matter.

**LIMITATION OF LIABILITY:** FEC SHALL NOT IN ANY EVENT BE LIABLE, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS, FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF USE OF PRODUCT OR ASSOCIATED GOODS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, OR CLAIMS OF BUYER'S CUSTOMERS. FEC'S LIABILITY FOR ANY CLAIM FOR LOSS OR DAMAGE ARISING OUT OF THIS CONTRACT OF FROM THE PERFORMANCE OR BREACH THEREOF OR CONNECTED TO ANY PRODUCT SUPPLIED HEREUNDER, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS, SHALL NOT EXCEED THE PRICE ALLOCABLE TO SUCH PRODUCT OR PART THEREOF INCLUDED IN THE CLAIM, REGARDLESS OF CAUSE OR FAULT.

**Charges and Costs:** Unless otherwise expressly in writing agreed, all taxes, duties, assessments and other charges imposed or collected by any governmental or taxing authority shall be paid by Buyer. Any increase in FEC's cost of performance resulting from increased freight rates, increased or additional freight surcharges, changes in currency exchange rates, additional taxes, duties, assessments, or other charges imposed by any governmental or taxing authority, increased insurance rates, and all other additional charges relating to the production, export, sale, loading, unloading, delivery, and transportation of products, shall also be charged to Buyer. If Buyer claims exemption from any taxes, Buyer will timely provide FEC with documentation required by the taxing authority to support the exemption.

**Shipment:** All shipments will be made EXW-FEC's Simi Valley, CA, location. All shipment or delivery dates are approximate and shall not be deemed to be fixed or guaranteed delivery dates. Partial shipment and/or transshipment shall be permitted. No non-conforming tender, or delay or failure in the shipment or delivery of any one lot shall excuse Buyer from accepting tender of any remaining conforming installments hereunder. All demurrage and other charges resulting from Buyer's delay in accepting delivery shall be charged to Buyer. In case of failure of performance by Buyer hereunder, FEC may defer further shipments or deliveries or, at its option, cancel delivery of any products which have not been shipped or delivered, and any losses, liabilities, costs, or expenses resulting from deferral or cancellation shall be charged to Buyer. Unless otherwise agreed to in writing by FEC in advance, Buyer shall be responsible for and bear all costs of obtaining all necessary export and import licenses, permits, and clearances.

**Force Majeure:** FEC shall not be liable for the delay of or failure to make shipment or delivery for any cause beyond it's reasonable control which affects FEC or any other person (whether known or unknown to the Buyer or FEC) involved in the sale, manufacturing, supply shipment, transportation or delivery of products, including but not limited to, strikes and other labor unrest, civil commotions, terrorism, war, riots, rules, laws, orders, restrictions, detentions, embargos, quotas or other actions of any government or any agency or sub-division of any government, shortages of supply of goods or transportation from FEC's usual suppliers thereof and fires, accidents, floods, and other acts of God. Shipment or delivery dates shall be extended for a period equal to the time lost by reason of any such cause.

**Infringement:** FEC SHALL NOT BE LIABLE IN ANY WAY FOR ANY LOSSES, LIABILITIES, SETTLEMENTS, COSTS OR EXPENSES (INCLUDING ATTORNEY'S FEES) PAID OR INCURRED BY BUYER OR ANY SUBSEQUENT PURCHASER, RESELLER, OR USER OF PRODUCTS SOLD PURSUANT HERETO WHICH RESULTI FROM ANY CLAIM THAT SUCH PRODUCTS OR THEIR SALE OR USE INFRINGE ANY PATENT, TRADEMARK, COPYRIGHT, DESIGN, OR OTHER INDUSTRIAL PROPERTY RIGHT OF ANY THIRD PARTY. If Buyer shall have furnished the specifications for products, Buyer shall indemnify and defend FEC against any and all losses, liabilities, settlements, costs and expenses (including attorney's fees) paid or incurred by FEC resulting from any claim arising from FEC's compliance therewith.

**FEC Property:** Unless otherwise agreed in writing, all materials, equipment and special tooling, including fixtures, molds, specifications, drawings, schematics and manufacturing or packaging aides, designed, or created by FEC in the performance, manufacturing or packaging of the products covered by any order shall remain the property of FEC notwithstanding the fact that Buyer may have paid any non-recurring engineering or similar charges or fees.

**Payment:** FEC may modify credit terms or may place sales to Buyer on a "Payment In Advance" or on "Delivery Basis" at any time. Payment in full is due within thirty (30) days of the date of the invoice issued by FEC unless otherwise specified on the face of the invoice. If any payment is not paid in full when due, Buyer shall pay a late charge on the amount unpaid for each day from the due date until paid in full at a rate equal to the lower of 1 1/2% per month or the maximum permitted by law. Late charges shall be payable upon demand. The imposition or payment of a late charge shall not be deemed to extend the due date of any payment.

**Assignment:** No transaction may be assigned by the Buyer without FEC's prior written consent.

**Attorney's Fees:** The prevailing party in any action or proceeding brought to interpret or enforce this agreement shall be entitled to reasonable attorney's fees, costs and disbursements in addition to any other relief to which it may be entitled.

**Severability:** The invalidity, in whole or in part, of any provision of this agreement shall not affect the validity or enforceability of any other provision.

**Laws, Codes, Regulations, Safety; Export:** Compliance with laws, codes, and regulations relating to the products sold hereunder and their use is the sole responsibility of Buyer, and FEC makes no warranty or representation with respect hereto. Buyer assumes the responsibility for providing and installing any device for the protection of safety and health and shall indemnify and hold harmless FEC against any expense, loss, or damage which FEC may incur or sustain as a result of Buyer's failure to do so. The Buyer agrees to comply with all applicable laws and regulations of the various states and of the United States. The Buyer shall not knowingly, without the prior written approval, if required, of the Office of Export Administration of the U.S. Department of Commerce or any other applicable government agency, export, either directly or indirectly, any product or any portion of product to, or from any country for which such approval is required. The Buyer expressly acknowledges that a product may also be subject to the export laws and regulations of the country into which the product is sold, and the Buyer shall abide by such laws and regulations. The Buyer also understands that the requirements and restrictions of United States law may vary depending on the product sold and delivered and may change over time, and that, to determine the precise controls laws, regulations and other restrictions applicable to the product, it is shall be necessary for the Buyer to refer to the U.S. Export Administration Regulations and the U.S. Foreign Assets Control Regulations, or other applicable export regulations. If exported by FEC, all products, commodities or technology were exported from the United States in accordance with the U.S. Export Administration regulations. Exports and re-exports of such products, commodities or technology however remain subject to the U.S. Export Administration Regulations. Any diversion contrary to U.S. law is absolutely prohibited.

**Law Governing:** Unless otherwise specified, all sales shall be governed and construed in accordance with the laws of the State of California.

**Security Interest:** Buyer hereby grants to FEC a purchase-money security interest in all products sold hereunder, and all proceeds thereof (including cash or accounts receivable) to survive until FEC receives payment in full for such products. Buyer agrees that so as to perfect and maintain FEC's security interest FEC may at will file UCC-1 financing statements in all applicable jurisdictions.

**EDI Purchase:** If FEC and Buyer mutually agree to use an electronic data interchange ("EDI") system to facilitate purchase and sale transactions, Buyer agrees that a) it will not contest: (i) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (ii) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form, and b) that these Terms shall apply to any such transactions. FEC and Buyer will negotiate and agree on technical standards and methods to use in making EDI purchases, and will use reasonable security procedures to protect EDI records from improper access. In the event of a conflict, the business records maintained by FEC regarding EDI purchases made by Buyer shall be deemed to be conclusive.