

ACUITY, INC.

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** THE ACCEPTANCE BY ACUITY, INC. ("SELLER") OF ANY ORDER PLACED BY THE UNDERSIGNED (THE "BUYER") IS EXPRESSLY LIMITED TO, AND MADE CONDITIONAL UPON, THE TERMS AND CONDITIONS CONTAINED HEREIN. BUYER'S ACCEPTANCE OF PRODUCTS DELIVERED BY SELLER WILL BE DEEMED TO BE BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. ANY OF THE BUYER'S TERMS AND CONDITIONS THAT ARE IN ADDITION TO, OR DIFFERENT FROM, THOSE CONTAINED HEREIN WHICH ARE NOT SEPARATELY AND SPECIFICALLY AGREED TO IN WRITING, ARE HEREBY OBJECTED TO AND WILL BE OF NO EFFECT.

2. **ACCEPTANCE.** Each order is Buyer's offer to purchase and is subject to acceptance by Seller. An order may only be accepted by Seller in writing and no binding obligation is created until an order has been accepted by Seller in writing.

3. **CANCELLATION; CHANGES.** Any cancellations or changes to the products ordered, specifications or delivery schedules requested by Buyer are subject to the agreement of Seller, given in its sole discretion. Notwithstanding any such agreement by Seller, Buyer shall be liable for any expenses associated with such changes, including expedite fees, cancellation and restocking charges, non-recurring engineering costs and other expenses, tooling and fixture changes and rework charges. All special orders specifically manufactured for the Buyer including all special materials and supplies are non-cancellable and non-returnable

4. **PRICES.** Irrespective of any prices listed on Buyer's order, the price shall be as shown on Seller's current price list, Seller's order confirmation, proforma invoice, or commercial invoice. Seller reserves the right to change its prices at any time until an order is accepted.

5. **TAXES.** All prices are exclusive of all federal, state and local excise, sales, use, value added and similar taxes. Such taxes will be paid by Buyer, or in lieu thereof, Buyer will provide Seller with a tax exemption certificate acceptable to the taxing authorities. When applicable, such taxes will appear as separate additional items on the invoice unless Seller receives a proper tax-exemption certificate from Buyer prior to shipment.

6. **PAYMENT.** Unless Seller has extended credit to Buyer as described below, Buyer will be required to pay for the order prior to shipment.

Should Seller elect to extend credit to Buyer, payment will be made in full within thirty (30) days of the date of Seller's invoice. Seller reserves the right at any time to change the amount of or to withdraw any credit extended to Buyer. Prepayment may be required for shipments above the credit limit. Failure to make payments when requested by Seller shall entitle Seller to delay, suspend or cancel deliveries in whole or in part at its sole option.

Any payments made after thirty (30) days may be subject to late charges of 5% per month or the maximum amount permitted under applicable law, whichever is lesser, of the amount due until all amounts due are paid in full. Buyer agrees to pay attorneys' fees and all costs and expenses of collection in the event of a legal/or collection action related to Buyer's failure to pay any amounts when due.

7. **SHIPMENT TERMS, TITLE AND DELIVERY.** Unless otherwise agreed by Seller, all shipments will be made FCA (ICC Incoterms 2010) Fremont, CA. Buyer will bear the cost and risks of moving the goods to the destination, including transportation cost, insurance and any applicable duties, fees or taxes. Buyer must specify the applicable carrier and provide a valid shipping account.

Buyer shall be deemed to have received and accepted products upon its signature (or waiver of signature) at time of first attempted delivery to Buyer by the carrier. Buyer agrees to promptly examine and test all delivered products and, in the event of any claim related to the delivered products, to give notice to Seller within 14 days of such date of receipt specifying in all relevant detail the nature of the claim. No claim for non-conformity or defect shall be valid after such 14-day period if such prompt examination or testing may have revealed such non-conformity or defect. Claims to Seller for shortages must be made in writing within 14 days after such date of receipt.

Shipping dates are approximate and are dependent upon Seller's prompt receipt of all necessary information from Buyer.

8. **SECURITY INTEREST.** Notwithstanding passage of title of products sold hereunder to Buyer upon delivery to carrier, Seller will retain a security interest in the products until payment has been made in full by Buyer for such products. Buyer will perform all acts necessary to perfect and maintain such security interest.

9. **WARRANTIES.** Seller warrants that at the time of shipment, the products sold hereunder will be free from defects in material and workmanship, and will conform to Seller's applicable specifications.

Should products sold hereunder fail to meet the above applicable warranty, Seller, at its sole option, will repair or replace such products or issue Buyer a credit in an amount no greater than the sales price to the Buyer provided that: (a) Seller is notified in writing by Buyer promptly after discovery of such failure and in any event no later than one (1) year after the date of shipment to Buyer; (b) Buyer obtains a Return Material Authorization (RMA) from Seller prior to returning any defective products to Seller; (c) the defective products are returned to Seller, transportation charges prepaid by Buyer; (d) the defective products are received by Seller for adjustment no later than four (4) weeks following the date of notice to Seller; and (e) Seller's examination of such products will disclose, to its reasonable satisfaction, that such products were defective and any failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, accident or negligence in use, storage, transportation or handling.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ITS PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

The foregoing warranty provisions set forth the Seller's sole liability and the Buyer's exclusive remedies for claims (except as to title) based on defects in or failure of any products sold hereunder or services furnished hereunder whether the claim is based in contract, tort (including negligence), warranty or otherwise and however instituted. Upon the expiration of the applicable warranty for any products sold hereunder, all such liability will terminate.

The above warranty periods will not be extended by the repair or replacement of products pursuant to any of the above warranties. The above warranties will apply only to Buyer and will not apply to Buyer's customers or any other third parties.

THE PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT SYSTEMS, EMERGENCY SERVICES, MILITARY, AEROSPACE, AIRCRAFT, PERSONAL TRANSPORTATION OR OTHER APPLICATIONS WHERE FAILURE TO PERFORM MIGHT BE EXPECTED TO CAUSE ANY CRITICAL APPLICATION TO FAIL OR TO CAUSE SIGNIFICANT INJURY OR DEATH TO USERS OR OTHERS, AND SELLER DISCALIMS ANY LIABILITY ARISING OUT OF SUCH USE.

10. **LIMITATION OF LIABILITY.** In no event, whether as a result of breach of contract, warranty or tort (including negligence) or otherwise, will Seller be liable for any special, consequential, incidental or punitive damages, including but not limited to, loss of profit or revenues, loss of the product or any facilities, service or replacement power, down time costs or claims of Buyer's customers for such damages. If Buyer transfers title to or leases products sold hereunder to any third party, Buyer will obtain from such third party a provision affording the Seller the protection of the preceding sentence.

For all claims hereunder, whether a claim is based in contract, tort (including negligence), or otherwise, Seller's total liability for any loss or damage arising out of or resulting from any products sold hereunder or the use thereof, or services furnished hereunder, will in no case exceed the price paid to Seller for the specific product(s) or service(s) which gives rise to the claim. Except as to title, all liabilities will terminate upon the expiration of the applicable warranty period specified in Section 9 above.

11. **COMPLIANCE WITH LAWS; REVERSE ENGINEERING.** Buyer agrees not to use the products to conduct any malicious activity or solicit the performance of any activity which is prohibited by law. Buyer agrees to comply with all applicable laws, rules and regulations in connection with the use of the products. Buyer shall not, nor shall permit any party to disassemble, decompile, reverse engineer or otherwise attempt to derive trade secrets from the products.

12. **U.S. GOVERNMENT CONTRACTS.** If the products to be furnished hereunder are to be used in the performance of a U.S. Government contract or subcontract, no Government requirements or regulations will be binding upon Seller unless specifically agreed to by Seller in writing.

13. **EXCUSABLE DELAYS.** Seller will not be liable for delays in delivery or performance due to any cause beyond its reasonable control, including, without limitation, acts of God, acts of Buyer, strikes or other labor disturbances, or inability to obtain necessary materials, components, services or facilities.

14. **ASSIGNMENT.** Any assignment by Buyer of an order, or of any rights or obligations in connection therewith, will be void without the written prior consent of Seller.

15. **EXPORT TO NON-APPROVED COUNTRIES.** Buyer agrees to take all reasonable and necessary precautions to prevent ultimate exportation of Seller's products to countries prohibited by rules or regulations of the United States Government and to obtain all export licenses and other governmental approvals necessary prior to the export of any Seller's products.

16. **GOVERNING LAW/ARBITRATION.** These terms and conditions and any orders accepted by Seller in writing and all transactions hereunder shall be governed by and construed under the law of the State of California, without regard to conflicts of laws rules. Any permitted claim arising out of the foregoing or related thereto will be determined by submission to final and binding arbitration and not by a lawsuit or resort to court process, except that either party may make an application to a court of competent jurisdiction for an order enforcing this arbitration agreement or for injunctive relief pending the arbitration award or other resolution of the controversy. Each party is giving up any right to have any such dispute decided in a court of law before a jury, and instead is accepting the use of arbitration. In rendering the award, the arbitrator will determine the rights of the parties according to the substantive laws of the State of California. All proceedings will be administered in San Jose, California, by the American Arbitration Association (AAA) in accordance with its then existing Commercial Arbitration Rules. In any arbitration or other proceeding or under any arbitration award or judgment based thereon, the prevailing party shall be awarded reasonable attorney fees, together with all costs and expenses, to resolve the dispute and to enforce the final judgment.

17. **MISCELLANEOUS.** The validity, in whole or in part, of any provision herein will not affect the validity or enforce ability of any other provision herein.

These terms and conditions and any orders accepted by Seller in writing set forth the entire agreement between the parties relating to the subject matter hereof, and supersede any prior oral or written agreements or communications between the parties relating to the subject matter thereof. Any representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller.

No modification, amendment, rescission, waiver or other change in these terms and conditions will be binding on Seller unless assented to in writing by Seller's duly authorized representative.