

# PO Terms and Conditions

*Revision 13*

## English Version – Non - USA Locations

**QUALITY:** Seller warrants that the goods will conform to description and specifications and will be free from all defects in material and workmanship and all defects due to design (other than Buyer's design). If, PRIOR to shipment, Seller determines that any of the goods are nonconforming and that the repair or replacement of such goods will delay shipment to Buyer, Seller shall immediately notify Buyer and, at Buyer's election, shall arrange for Buyer's inspection of such nonconforming goods. Buyer may (i) accept such goods notwithstanding the nonconformance, (ii) accept such goods subject to Seller's agreement to an equitable price reduction, or (iii) reject such goods. No acceptance of such nonconforming goods shall be considered a waiver of any specifications or requirements as to any other shipment of goods. Upon receipt, Buyer shall have the right to inspect and test any goods before acceptance if such inspection and test are made within a reasonable time or as provided in the specifications. Seller shall pay the cost of inspecting and testing of goods rejected and all transportation charges thereon. Upon request of Buyer, Seller, at its sole expense, shall repair, or replace f.o.b. Buyer's plant, all or any part of any goods covered by this Order which proves to be defective in material or workmanship within one (1) year from the date it is either used or placed in operation. Seller shall immediately notify Buyer of any deviations detected AFTER shipment. To support a rapid solution, Seller shall disclose all necessary data and facts.

**QUANTITY:** Goods shipped in excess of quantity designated in this Order may be returned at Seller's expense.

**TRANSPORTATION CHARGES:** Except as otherwise mutually agreed to in writing, (a) where transportation charges are separately charged to Buyer by Seller, such charges shall in no event exceed the lowest legal freight charges via the carrier or routing specified herein, in effect on the date of shipment, and (b) where transportation charges are allowed to Buyer by Seller, such allowance shall not be less than the actual freight charges paid by Buyer or, where Buyer performs the transportation, such allowance shall be in amount equal to the freight charges which would have been assessed for a like movement via common carrier.

**DELIVERY:** The goods shall be properly packaged for shipment. Each package shall be numbered and labeled with Buyer's order number, stock number, contents, weight, and shall contain an itemized packing slip. No charges will be allowed for packing, crating, freight express or cartage unless specified on the face hereof. Time is of the essence hereof. If any goods are not delivered within the time specified in this Order, or within a reasonable time if no time is specified, Buyer may either (i) refuse to accept such goods and terminate this Order, or (ii) cause Seller to ship the goods by the most expeditious means of transportation whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller.

**INVOICES:** Unless otherwise requested by Buyer, invoices shall (a) be rendered separately for each delivery; (b) cover not more than one order; (c) be rendered with order number noted thereon.

**PATENTS:** Seller shall protect and indemnify Buyer from and against claims, damages, judgments, expenses including attorney fees and loss arising from infringement or alleged infringement of any patent of the United States, Japan or any other countries by any of the goods delivered hereunder, and Seller shall defend or settle at its own expense any suit or proceeding brought against Buyer for such infringement. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any of the goods delivered hereunder, Seller, at its option, shall promptly either (i) secure termination of the injunction and procure for buyer the right to use such goods without any obligation or liability, (ii) replace said goods with non-infringing goods or modify same to become non-infringing, all at Seller's expense and to Buyer's satisfaction, or (iii) remove said goods at Seller's expense and

refund to Buyer the amount paid to Seller therefore. The provisions of this paragraph, however, shall not apply to any claims, damages, judgments, expenses or loss arising from infringement or alleged infringement specifically resulting from the Buyer's use of any of the goods delivered hereunder in combination with other materials or in the practice of any process.

**INSTALLATION AND WORK:** In the event that any of the goods requires, in connection with the installation thereof or work thereon, the services of a supervisor, expert or other person connected with or employed by Seller, and Seller agrees to furnish the same, either with or without charge, such supervisor, expert or other person in performing such services shall not be deemed to be the agent or employee of Buyer, and Seller assumes full responsibility for his acts and omissions and exclusive liability for any payroll taxes or contributions imposed by any applicable.

**RIGHT OF ACCESS:** Upon advance written notice from Buyer, Seller shall permit Buyer, Buyer's customer, and applicable regulatory authorities, access to any of Seller's facilities and/or quality-related records and data associated with Buyer's purchase of the goods. Buyer's notice shall state the reasons for which access is required, and access shall be conditioned upon execution of any reasonable confidentiality agreement of Seller's.

**INSURANCE:** Prior to Seller's commencing any work under the QUALITY paragraph or other terms of this Order on property owned or controlled by Buyer or by any other party on whose property the goods are installed, Seller shall at its expense, procure and maintain Worker's Compensation and Employers Liability to the extent required by law, Commercial General Liability, Automobile Liability, and Environmental Impairment Liability (if the Work involves hazardous waste material) in such amounts as are approved by Buyer. Prior to commencing any such work, Seller shall furnish to Buyer written certificates establishing that the above insurance has been procured and is being maintained, which certificates shall provide that written notice of cancellation shall be given to Buyer at least fifteen (15) days prior to the effective date of such cancellation.

**LIQUIDATED DAMAGES:** In the event that Seller breaches any of the terms and conditions herein, Buyer shall have the right to send a notice in written form or via email or fax calling for a rectification of the breach by Seller within a specified period of time. If Seller fails to rectify the breach within the period of time, so specified by Buyer, Seller shall be liable for the payment of liquidated damages equal to 0.5% of the total price hereunder per day for each day of delay, without prejudice to any other right or remedy of Buyer as established herein or pursuant to applicable law.

**INDEMNITY AND PHYSICAL DAMAGE RESPONSIBILITY:** Seller shall indemnify and save harmless Buyer, any party on whose property the goods are installed, and their employees and agents, against all claims, liabilities, losses, damages and expenses including attorney fees of any character whatsoever, for bodily injury, sickness and/or disease, including death at any time resulting from any of the foregoing, sustained by any employee of Seller, or of a subcontractor of Seller, while in on or about the property of Buyer or the site of installation of the goods, if or where such injury, sickness, disease and/or death was in any way connected with any work under the QUALITY paragraph or other terms of this Order or with the performance of or failure to perform said work, whether or not such injury, sickness, disease and/or death was in any way connected with the negligence of Buyer, the aforesaid party, or any of their employees or agents. Seller shall be responsible and liable for loss or destruction of, or damage to, all tools, equipment and other personal property of Seller, any subcontractor of Seller, or any of their employees or agents, whether or not such loss, destruction, or damage was in any way connected with the negligence of Buyer, the aforesaid party, or any of their employees or agents.

**FORCE MAJEURE:** Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulation, complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or power, and/or any other similar or different occurrence beyond the reasonable control of

the party so defaulting or delaying. The party whose performance is prevented by any such occurrence shall notify the other party thereof in writing as soon as is reasonably possible after the commencement of such occurrence, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other party of the cessation of such occurrence. No payment shall be made by Buyer to Seller for any expenses incurred by Seller by reason of such default or delay.

**DRAWINGS AND OTHER ITEMS:** Unless otherwise expressly provided in this Order, all drawings, blueprints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the goods hereunder, which are prepared or constructed by Seller pursuant to the terms of this Order, shall be the property of Buyer, and upon completion of deliveries of the goods hereunder, or upon termination of this Order, shall be delivered to Buyer.

**FLOW DOWN:** If any part of Seller's work in support of this Order is subcontracted by Seller to another supplier, then all applicable requirements to which Seller is subject shall flow down to such supplier, and Seller agrees to include such requirements in its contract with such supplier.

**SECRECY:** As used on this Order, "Confidential Information" shall mean and include any and all of the following: information, know-how and data, whether technical or non-technical, which is in any way, heretofore or hereafter, disclosed to Seller by or on behalf of Buyer in the course of, because of, or in connection with this Order or in connection with proposals or negotiations for this Order.

Except as provided below and except as otherwise agreed to in writing by Buyer, Seller shall use its best efforts to keep confidential, and to prevent the disclosure of, Confidential Information, except, on a confidential basis, to such of its employees and subcontractors who need such Confidential Information in order to enable Seller to properly perform under this Order, and who sign secrecy agreements obligating them at least to the same extents as Seller is obligated under this provision, and Seller shall not use, or permit to be used, Confidential Information for anyone other than Buyer.

Seller's obligations under this SECRECY provision shall not apply, however, to confidential Information when, after and to the extent that the Confidential Information either:

- a) is known to the public through no action or fault of Seller; or
- b) was known to Seller prior to the first disclosure to Seller by or on behalf of Buyer or any affiliate of Buyer and Seller can establish such fact by reasonably convincing evidence; or
- c) is received by Seller in good faith from a third party other than an affiliate of Buyer and Seller does not violate any obligation which it may have to a third party with respect to such Confidential Information.

As used in this SECRECY provision, "affiliate of Buyer" shall mean: (i) any corporation 50% or more of the voting capital stock of which is owned or controlled by Buyer; or (ii) any corporation owning or controlling 50% or more of the voting capital stock of Buyer; or (iii) any corporation 50% or more of the capital stock of which is owned or controlled by a corporation owning or controlling 50% or more of the voting capital stock of Buyer.

**RESPONSIBLE BUSINESS ALLIANCE CODE OF CONDUCT:** The Responsible Business Alliance (RBA) Code of Conduct is a comprehensive set of standards which addresses all aspects of corporate social responsibility, and includes rules related to labor, health and safety, the environment, ethical issues and management systems in the electronics industry supply chain. The RBA Code of Conduct establishes standards to ensure that working conditions in the electronics industry or industries in which electronics is a key component and its supply chains are safe, that workers are treated with respect and dignity, and that business operations are environmentally responsible and conducted ethically. Compliance with the RBA Code of Conduct is required of all of Buyer's suppliers. Information concerning the RBA Code of Conduct is available at

<http://www.responsiblebusiness.org/standards/code-of-conduct>. Seller represents and warrants that (i) Seller has read and understands the RBA Code of Conduct; (ii) Seller is compliant with the RBA Code of Conduct; (iii) Seller shall conduct periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the RBA Code of Conduct and customer contractual requirements related to social and environmental responsibility, and shall supply copies of such self-evaluations to Buyer upon Buyer's written request; and (iv) Seller will remain compliant with RBA Code of Conduct and will immediately notify Buyer in the event that Seller learns of items of noncompliance.

**CONFLICT METALS:** If the goods are, or contain, tin, tantalum, tungsten, and/or gold (whether in raw or processed form, and whether or not combined with other materials), Seller hereby certifies that such metals have not been sourced in a manner which directly or indirectly finances or benefits armed groups in the Democratic Republic of the Congo or adjoining countries or in any region determined to be a conflict affected and high risk area (CAHRA) as defined in the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Supply Chain of Minerals from Conflict-Affected and High-Risk Areas, which includes any entities located therein. In addition, Seller shall have and implement its own Conflict Mineral Policy which shall be aligned with Buyer's policy (available at <http://www.kemet.com/KEMET-Supply-Chain-Policy>), which shall include a commitment to legal compliance and shall be communicated to Seller's sub-suppliers. Seller shall ensure that purchased tin, tantalum, tungsten, and/or gold originates from smelters validated/certified by third parties in accordance with procedures adopted by the Responsible Minerals Initiative (RMI) as being conflict free. Seller shall work with sub-suppliers to ensure traceability of these metals within their goods, back down to smelter and mine. Upon request, Seller will provide Buyer with a completed conflict minerals declaration using the RMI Conflict Minerals Reporting Template (CMRT). Traceability data shall be maintained and recorded for 5 years.

**COMPLIANCE WITH LAWS:** Seller shall comply with all laws, ordinances, and government rules, regulations and orders applicable to this Order including, but not limited to, (a) all laws, ordinances, and government rules, regulations and orders regarding restricted, toxic and hazardous substances applicable to the goods, their manufacturing process(es).

**ASSIGNMENT:** Seller may not assign its rights or obligations in connection with this Order without the prior written consent of Buyer.

**NON-WAIVER:** No waiver by either party of any breach of any of the terms of this Order to be performed by the other party shall be construed as a waiver of any subsequent breach, whether of the same or of any other term of this Order.

**REMEDIES:** The rights and remedies of Buyer set forth in this Order are not exclusive and are in addition to all other rights and remedies of Buyer.

**GOVERNING LAW:** The validity, interpretation, and performance of this Order shall be governed by the law of the Country in which this Order is issued by Buyer.

**STATEMENT TO PREVENT TRANSACTIONS WITH DENIED PERSONS/DEBARRED PARTIES/SDN:** To ensure compliance of U.S. export laws, Buyer does not conduct any business transaction



with the "Denied Persons List" published by the U.S. Department of Commerce, the "Denied Parties List" published by the Department of State, and the "Specially Designated Nationals List" published by the Department of Treasury, Foreign Assets Control. Buyer expects all suppliers/sellers and its subcontractors to comply with these laws as well. (Seller may review the U.S. Government web site for each of the Agencies noted above to access their lists).

**MISCELLANEOUS:** If this Order constitutes an offer, Seller's acceptance of this Order is hereby expressly limited to the terms of this Order and shipment of any part of the goods covered hereunder shall be deemed to constitute such acceptance. If this Order constitutes an acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms of this Order, and shipment of any part of the goods covered hereunder shall be deemed to constitute such assent. This Order constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and there are no oral understandings, representations or warranties affecting it. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this Order. This Order shall not be amended or any term waived except in writing signed by the parties hereto.