

# FCT ELECTRONICS, LP

## General Terms And Conditions



The FCT Electronics, LP hereinafter 'Seller' will supply the items and/or services identified on the face of this Quotation or Acknowledgment expressly conditional upon Buyer's acceptance of the following terms. Seller, by its commencement of performance, shall not prejudice the rights to enforcement of these conditions.

- 1. ACCEPTANCE OF ORDER:** No purchase order shall be binding upon Seller unless and until accepted in writing by an authorized employee of Seller, or by performance. No terms or conditions of Buyer's purchase order or other similar instrument including without limitation price, delivery schedule, imposed provisions of the U.S. Federal Acquisition Regulations (FAR) or those similar regulations imposed by other branches of the government, which alter or are inconsistent with Seller's terms and conditions shall be binding upon Seller, nor shall apply to this transaction, unless specifically agreed to in writing by Seller.
- 2. PRICE AND DESIGN CHANGES:** Seller reserves the right to make changes in design at any time without incurring any obligations to provide such changes on units previously sold or to continue to supply obsolete items. Unless otherwise agreed in writing, the prices quoted are based upon manufacture of the quantity and types originally specified and are subject to revision for variations in quantity, specifications and/or delivery rates, or when interruptions or engineering changes are caused or requested by Buyer. Changes to an order following acceptance by Seller will not be effective until mutual agreement has been reached regarding the effect of such changes on price, delivery and other conditions of the order. Quoted prices do not include federal, state or local taxes, and such taxes, if any, will be added to the quoted prices and will be shown as a separate line item on invoices.
- 3. MINIMUM ORDER VALUE:** The acceptable minimum value of any order is as indicated on face of our Quotation Form.
- 4. SHIPMENTS:** All supplies and services are sold E.X.W. (Ex Works), and the point of origin shall be Seller's facility. Costs of normal boxing and packaging for domestic shipment are included in quoted prices. Method of shipment is as shown on the face of this Quotation or Acknowledgment, and unless specified otherwise, Seller normally will use the most convenient, least expensive surface transportation. When special domestic or export packing is specified, a change may be made to cover any extra expenses incurred. Seller assumes no responsibility for delay, breakage, damage or loss after its delivery to the carrier. Seller reserves the right to make partial shipments at its discretion. The delivery dates quoted are Seller's best estimate, which may be delayed due to engineering, material acquisition, or production delays and Seller disclaims any liability for direct, incidental, or consequential damages caused by said delays.
- 5. TERMS OF PAYMENT:** Unless otherwise stated on the face of this document, terms of sale are 'net 30 days' from date of invoice, with no discount allowed for early payment. At any time when in its opinion the financial condition of Buyer warrants, Seller may either alter or suspend credit, and in cases where credit is not established satisfactorily, or financial information is not available, the terms of sale shall be cash with order or C.O.D. at Seller's option. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. In addition to any other rights and remedies available to Seller, failure to pay any amount due within the time specified will result in a late charge of 1½% per month being added to Buyer's account until final payment.
- 6. RESCHEDULES:** The prices quoted are expressly for the delivery dates negotiated. While Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate buyer's reasonable requests for acceleration or deceleration, made at least thirty (30) days prior to scheduled delivery, and stop work instructions not exceeding ninety (90) days duration. Such changes or instructions, if accepted by Seller, shall require an equitable adjustment in the contract price or delivery schedule, or both.
- 7. RAW MATERIAL, CURRENCY, AND SOURCE INSPECTION SURCHARGES:** The price for items containing precious metals, non-ferrous metals, magnetic materials and/or alloys thereof shall be subject to application of surcharge(s) at time of shipment, based upon substantial fluctuations in the market value of such raw materials. Further, a surcharge may be applied to each shipment requiring inspection at Seller's plant by the government and / or Buyer's own inspection department or other private agency when concurrence with such inspection otherwise has been granted by Seller.
- 8. CANCELLATIONS:** Any order, once accepted by Seller, shall not be subject to unilateral cancellation except Cancellation for the Convenience of the U.S. Government, which shall be processed in accordance with the procedures established in FAR. Cancellations received by us within 45 days of our acknowledged ship date are subject to charges up to the full value, and partial charges may apply to cancellations within 90 days of our acknowledged ship date. Buyer shall not cancel the order in whole or in part where non-conformity in any partial or installment delivery does not impair the value of the whole contract. In the event of cancellation for any reason, Seller shall not be liable for any incidental or consequential damages caused by such cancellation.
- 9. EXPORT REGULATIONS:** Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations, and buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission.
- 10. PATENT INFRINGEMENT:** Seller shall have no liability to Buyer for costs arising from any claim of infringement of any domestic or foreign patent by an item manufactured by Seller, whether used alone or in combination with other items.
- 11. TECHNICAL DATA AND PROPERTY OF SELLER:** All designs, inventions (whether or not patentable), processes, software, technical information, drawings, and/or confidential information, hereinafter 'Technical Data', related to the items or services sold hereunder and not furnished by Buyer or specifically paid for by Buyer as a separate line item are the exclusive property of Seller, and all rights, title and interest in and to such property shall remain exclusively in Seller, notwithstanding Seller's disclosure of any thereof to Buyer or Buyer's payment to Seller for engineering or non-recurring charges. Buyer shall not use or disclose such Technical Data to any party without the prior written consent of Seller. Likewise, title to all tools, test equipment, and facilities not furnished by Buyer or specifically paid for by Buyer, as a separate line item shall remain in Seller. Unless otherwise specifically agreed in writing, Technical Data furnished under a U.S. government contract or subcontract will be furnished with 'limited rights' under the provisions of FAR if the Buyer has not agreed to pay the entire cost of development of the delivered items and Technical Data involved. Unless it is separately purchased by Buyer, Seller shall not be obligated to furnish any Technical Data or to grant Buyer any patent, license or other rights to it.
- 12. EXCLUSIVE WARRANTY AND REMEDY:** Seller warrants that each newly-manufactured article sold hereunder, and such portion of a repaired/refurbished article as has been repaired, refurbished, or replaced by Seller, shall be free from defects in material or workmanship at time of shipment, and for ninety (90) days from the date of shipment shall perform in accordance with the specifications, if any, incorporated herein. This warranty shall not extend to any article which upon examination by Seller is found to have been subjected to a) mishandling, misuse, tampering, negligence, or accident, or b) installation, operation, or maintenance which either was not in accordance with Seller's instructions or was otherwise improper, or c) repair or alteration by anyone other than Seller. Seller shall not be responsible for damage to any associated instruments, equipment or apparatus. Should any failure to conform to this warranty be discovered and brought to Seller's attention within ninety (90) days from the date of shipment and be substantiated by examination at Seller's factory or by authorized field personnel, then, at its own cost, Seller shall correct such failure, at its option, by repair or replacement of the non-conforming portion of such article or by return of the purchase price. Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller and that no other remedy shall be available. In no event shall Seller be liable for special, incidental, or consequential damages. Buyer shall notify Seller in writing of any alleged defect or failure in detail and expressing its desire to return such article under the remedy provided herein. No returns shall be accepted without prior approval by Seller, and all articles returned to Seller must be shipped in accordance with Seller's shipping instruction and with transportation charges prepaid. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 13. LIMITATION OF LIABILITY:** Seller shall not under any circumstances be liable for any general damages greater than the cost of the articles and hereunder, or for any special, incidental, or consequential damages whatsoever, whether arising from Seller's negligence, breach of contract, breach of expressed or implied warranty, any law giving rise to a claim of strict liability, or any other cause.
- 14. FORCE MAJUERE:** Seller shall not be liable to Buyer or in breach of contract for any failure or delay in performance due to fire, flood, labor strike, work stoppage, commercial impracticability, war, act of God, or any other cause beyond the control of Seller.
- 15. NON-WAIVER:** These terms and conditions set forth the entire understanding between the parties with reference to the subject matter hereof. The failure of Seller to enforce at any time any of the provisions hereof shall not constitute a waiver of such provision or a waiver of the right to enforce any or all provisions at another time.
- 16. APPLICABLE LAW:** This sale and the contract between the parties shall be deemed executed in and shall be construed in accordance with the laws of the State of Connecticut.
- 17. TAXES:** Buyer agrees to pay any applicable sales or use taxes whether the taxes are separately invoiced or not, unless Buyer furnished FCT Electronics, LP with adequate tax exemption certification.
- 18. SUBSTITUTION OF MATERIALS:** Seller reserves the right to make substitutions of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit, or function.
- 19. OVER AND UNDER SHIPMENTS:** We reserve the right to over or under ship 5% of the ordered quantity per line item not to exceed \$50.00 in value.