

Ultra Electronics ICE, Inc.

QAF-94 Standard Terms and Conditions of Sale

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

“Seller” shall mean Ultra Electronics ICE, Inc., trading at Ultra Precision Control Systems, a corporation based in Kansas having its registered office at 2700 Amherst Avenue, Manhattan, KS 66502.

“Buyer” shall mean the party identified on the face of the “Order(s)” with whom the Seller is contracting.

Whereas, Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, such products and/or services (“Products”), solely upon the standard terms and conditions of sale stated herein (“Agreement”), and on no other terms, unless mutually agreed in writing.

Now, therefore, in consideration of the foregoing the parties, intending to be legally bound, do hereby agree as follows:

1. APPLICABILITY

- 1.1. The Buyer may place Order(s) with Seller for Seller Products and all such Orders will be governed solely by this Agreement, unless otherwise mutually agreed.
- 1.2. Any oral understandings are expressly excluded.
- 1.3. Seller shall not be deemed to have waived the terms and conditions contained herein if it fails to object to provisions appearing on, incorporated by reference in, or attached to any Buyer order form, and those provisions are hereby expressly rejected.
- 1.4. No contrary or additional terms or conditions contained in any Buyer order form shall apply unless agreed to in writing and signed by an authorized representative of Seller. Additionally, Seller reserves the right to reject any Order submitted to it by Buyer.
- 1.5. All Orders are subject to acceptance in writing by an authorized representative of Seller.

2. PRICES AND TERMS OF PAYMENT

- 2.1. Prices and payments will be in United States dollars, and payment shall be made in United States currency. Invoice terms are net 30 days unless otherwise specified.
- 2.2. All prices published by Seller or quoted by Seller’s representatives may be changed at any time without notice. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions which are not part of Seller’s original price quotation. Prices quoted are believed to be accurate; however, Seller reserves the right to correct any inadvertent errors in these prices prior to acceptance of the Order.
- 2.3. Seller reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved.
- 2.4. In the event payments are not made in a timely manner, Seller may, in addition to all other remedies provided at law, either:
 - 2.4.1. declare Buyer’s performance in breach and terminate this Order for default;
 - 2.4.2. repossess the goods for which payment has not been made;
 - 2.4.3. withhold future shipments under this Order until delinquent payments are made;
 - 2.4.4. deliver future shipments under this Order on a cash with Order or cash in advance basis even after the delinquency is cured;
 - 2.4.5. charge interest on the delinquency at a rate of 8% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges or inventory carrying charges; or
 - 2.4.6. recover all costs of collection including reasonable attorney’s fees; and
 - 2.4.7. at Seller’s option combine any of the above rights and remedies as provided by law.

3. TAXES AND OTHER CHARGES

- 3.1. Prices for the Products are exclusive of all excise, sales, use, transfer and other taxes and duties imposed by any federal, state, municipal or other governmental authority with respect to the sale, purchase, manufacture, delivery, storage, processing, use, consumption or transportation of any Products covered hereby, all of which taxes and duties must be paid by Buyer.
- 3.2. Seller reserves the right to revise its price after the execution of the Order between the parties to include any and all taxes or duties that may become due and Seller may invoice Buyer for said additional amount. This clause shall survive the acceptance and complete performance of the Order by the parties herein.

4. DELIVERY, CANCELLATION OR CHANGES BY BUYER

- 4.1. The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's facility in Manhattan, Kansas. Unless otherwise mutually agreed to by the parties, Seller will select the carrier for shipment of the Products, but in no event will Seller be deemed to assume any liability in connection with such shipment nor will the carrier be deemed to be the agent of Seller.
- 4.2. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. The Products will be insured in transit at the expense of Buyer. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder.
- 4.3. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the Order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay.
- 4.4. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account.
- 4.5. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges.
- 4.6. Orders in process may not be changed except with Seller's written consent and upon written agreement by the parties as to an appropriate adjustment in the purchase price therefore.
- 4.7. Credit will not be allowed for Products returned without the prior written consent of Seller.

5. INSPECTION

- 5.1. The Buyer shall inspect and accept, or reject products delivered pursuant to the Order immediately after Buyer takes custody of such products. In the event the products do not comply with the applicable Seller specifications, the Buyer shall notify the Seller of such nonconformance and give the Seller a reasonable opportunity to correct any such nonconformance. The Buyer shall be deemed to have accepted any products delivered hereunder and to have waived any such nonconformance in the event Seller does not receive notification that the Products delivered hereunder do not comply with the Seller's specifications, within five (5) days after the Buyer takes custody of such Products. Unless otherwise mutually agreed in writing, the Buyer shall have no right to conduct inspection at Seller's facility.

6. TITLE AND RISK OF LOSS

- 6.1. Subject to the provisions of Section 9 below and to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software or other licensed property incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be. Any claims for damage to, or loss of, or mis-delivery of, the Products will be filed directly with the carrier by the Buyer.

7. CHANGES

- 7.1. Seller at all times reserves the right, and is entitled in its sole discretion, to make changes, additions or improvements to the products being delivered under an Order without liability or any obligation to incorporate such changes, additions or improvements into any item or product manufactured, sold or delivered prior to incorporation of the change, addition or improvement.

8. OBSOLESCENCE

- 8.1. The Seller shall not be liable or responsible for ensuring the continued supply and maintainability of the Products, whether they are of the Seller's, Buyer's or a third party's design.
- 8.2. The price for the Products assumes that there are and will be no obsolescence issues. Any obsolescence issues that are identified will be subject to a separate Order for the investigation and replacement of the obsolete parts.

9. SECURITY INTEREST

- 9.1. Until the invoice covering the Products has been paid in full, Seller reserves and Buyer grants to Seller a security interest in all Products sold and all proceeds thereof to secure the full payment and performance by Buyer of its obligations and liabilities to Seller. Buyer acknowledges and agrees that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may request in order to evidence or perfect such security interest.

10. WARRANTY

- 10.1. The Seller warrants that the Products will operate substantially in conformance with Seller's published specifications, when subjected to normal, proper and intended usage by properly trained personnel, for a period of one (1) year from the date of shipment to Buyer (the "Warranty Period").
- 10.2. Seller agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any defect and further provided that all cost of returning the defective Products to Seller are pre-paid by Buyer, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said specifications. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the provisions of Section 4 above. Expendable items are expressly excluded from the warranty under this Section 10.
- 10.3. Seller's sole liability with respect to equipment, materials, parts or software furnished to Seller by third party suppliers shall be limited to the assignment by Seller to Buyer or any such third party supplier's warranty; to the extent the same is assignable. In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner of which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller.
- 10.4. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by the warranty provided in this Section 10, Buyer shall pay Seller therefore at Seller's then prevailing time and materials rates.
ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED OR APPROVED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.
EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 10, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

11. INDEMNITY

- 11.1. Buyer shall indemnify, defend and hold Seller harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney's fees and costs incurred that in any way arise out of or relate to (a) the manner in which Buyer and/or any of its customers or end users use or operate the Products; (b) any personal injuries, property damages or other losses resulting or occurring from the willful or negligent acts or omissions of Buyer, its customers or end users; (c) defects or other problems with other component parts, equipment or materials produced or supplied by anyone other than Seller and that may be used with the Products; and/or (d) Buyer's transactions with its customers, end users or other parties regarding the Products.

12. CONFIDENTIALITY

- 12.1. The design, production and operation of the Products, in any form, are proprietary information and trade secrets of the Seller ("Proprietary Rights"), and such Proprietary Rights shall not be disclosed or otherwise transferred by Buyer or Buyer's employees to any other person or entity at any time. Buyer shall not modify, reverse engineer, improve or otherwise change any Product or parts thereof, or any of Seller's Proprietary Rights related thereto, and shall not use, appropriate or copy any of Seller's Proprietary Rights, either for itself or for others. Buyer shall not incorporate or in any way use any of Seller's Proprietary Rights or confidential information (disclosed separately or embodied in any of the Products) in its or any other party's products or businesses.

13. PROPERTY RIGHTS

- 13.1. Seller shall solely own and have exclusive worldwide rights, title and interest in and to all United States and foreign patents, trademarks, service marks, copyrights, mask works, trade secrets, and all other intellectual and industrial property rights in any way related to the Products, to Seller's Proprietary Rights, and to all modifications, improvements and derivative works related thereto.
- 13.2. Title to all of Seller's Proprietary Rights embodied in the Products shall always remain with Seller, and Buyer's use thereof shall be restricted under a non-exclusive license granted by Seller. Subject to Buyer's performance of all obligations hereunder, Seller hereby grants to Buyer a personal, non-exclusive, non-transferable and indivisible license to use Seller's Proprietary Rights only as they are embodied in the Products and for no other purpose.
- 13.3. Buyer shall not remove Seller trademark notices, copyright notices, patent markings or mask work notices on or in the Products or on any other materials supplied by Seller.
- 13.4. Sections 12 and 13 shall survive the termination of this Agreement, and shall be specifically enforceable by injunctive and other relief against Buyer in the event of Buyer's breach since both parties agree that Seller will be irreparably harmed and money damages would be inadequate compensation to Seller for Buyer's breach. In the event of such breach, Seller shall be entitled to injunctive relief against Buyer in addition to any other remedies to which it is entitled.

14. LIMITATION OF LIABILITY

- 14.1. Except as expressly stated in the Agreement, all terms, conditions, warranties and representations, whether express or implied by statute, common law, usage or otherwise, are excluded to the maximum extent permitted by law.
- 14.2. Subject to section 14.4, the Seller's aggregate liability for all events arising out of or in connection with the Agreement shall be limited to an amount equal to the total purchase price thereto paid by Buyer to Seller with respect to the Product(s) giving rise to such liability.
- 14.3. Subject to section 14.4, the Seller shall incur no liability whatsoever (including without prejudice to the generality of the foregoing any liability in tort) for any injury, loss, damage, or liability suffered or sustained by Buyer or Buyer's property, or by any other party or by any other party's property, in the course of or as a result of any use, handling, application, supply delivery resale or disposition of any Products however the same may have been caused and notwithstanding that the same may have been due to any act, omission, negligence or default of the Seller or its supplier(s) or sub-contractor(s) or agent(s) or any employee or agent of the Seller or any such person and Buyer hereby waives to the Seller all rights in respect thereof.
- 14.4. Notwithstanding any other provisions of this Agreement, the Seller shall in no circumstance be liable for:
- 14.4.1. Indirect or consequential loss or damages; or
 - 14.4.2. Loss of profits; loss of business; loss of contracts; loss of goodwill; loss of revenue; loss of production; loss of anticipated savings or loss arising from any claim made against the

Buyer by any third party; in each case whether caused by breach of contract (including the Agreement), negligence, breach of any statutory duty or arising in any other way.

14.5. Nothing in the Contract is intended to limit or exclude the Supplier's liability for:

14.5.1. death or personal injury;

14.5.2. fraud; or

14.5.3. anything else which cannot by law be limited or excluded.

15. RESALE

15.1. Buyer may not resell or otherwise transfer the Products, or sublicense property licensed hereunder, except subject to limitations on Seller's warranty, indemnity, confidentiality and liability and Buyer's license rights, at least as stringent as those in Sections 10, 11, 12, 13 and 14.

16. TERMINATION

16.1. Buyer shall not terminate or cancel any Order, or portion thereof, after it is given to the Seller without Seller's prior written consent in its sole discretion and subject to the condition that Buyer pays to Seller the sum of:

16.1.1. the price of all Products previously delivered to Buyer,

16.1.2. Seller's actual costs incurred as a result of such termination (e.g., purchase of raw materials and other obligations), which Seller will attempt to keep as low as possible, and

16.1.3. a cancellation fee of twenty percent (20%) of such actual costs.

17. ENTIRE AGREEMENT

17.1. Agreement is the sole and entire agreement between the parties and shall supersede all prior or contemporaneous written or oral understandings, representations or communications and/or other terms in any Order or other document, now or hereafter delivered. The provisions of this Agreement shall apply to any and all Orders or requests for Products submitted by Buyer to Seller at any time in the future, without the need for either party to execute this Agreement. No modification of this Agreement shall be valid unless in writing and signed by an authorized representative of Seller.

18. GOVERNING LAW

18.1. This Agreement shall be construed and enforced according to the laws of the State of Kansas.

19. EXPORT

19.1. Buyer shall not directly or indirectly export, transfer or in any way distribute any of the Products, or parts thereof, or any of Seller's Proprietary Rights or technical data to any country or territory that is prohibited from receiving such materials under any applicable law of the United States.

19.2. Buyer shall comply with all applicable laws and regulations, including, without limitation, all of the laws and regulations of any applicable agency of the United States government responsible for the administration of the United States export control laws and regulations and the United States Foreign Corrupt Practices Act of 1977, as amended.

19.3. Buyer shall also be responsible for obtaining all export licenses or other approvals required to export or re-export the Products outside the United States.

19.4. Buyer further indemnifies, defends and holds Seller harmless from all damages, claims, expenses, liabilities and losses including without limitation attorney's fees and costs that in any way arise out of or relate to Buyer's breach of this warranty and/or failure to comply with the provisions of this Section 19.

19.5. Seller shall not be liable in the event any authorization of any governmental authority is delayed, denied, revoked, restricted and not renewed, and Buyer shall not be relieved thereby of its obligations to pay Seller for its Products or any other charges which are the obligations of Buyer under this Agreement.

20. INTEGRATION OF EQUIPMENT

20.1. Seller shall not be liable for any damages or costs associated with the integration, installation or incorporation of the Products with equipment or materials not provided by Seller.

21. AUTHORITY

21.1. The persons executing Order(s) on behalf of Seller and Buyer warrant and represent that they have been authorized by their respective board of directors or other governing bodies to bind their respective companies to all of the provisions of the Order(s) and this Agreement.

22. SURVIVAL

22.1. All of the provisions of Section 11, 12, 13, 14, 15 and 20 of this Agreement shall survive the termination or expiration of this Agreement.

23. ASSIGNMENT

23.1. Buyer shall not assign, transfer or otherwise encumber this Agreement or any part thereof without Seller's prior written consent.

24. SEVERABILITY

24.1. If any provision of this Agreement is held by an arbitrator or a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

25. CHANGES TO THESE TERMS AND CONDITIONS

25.1. Any changes to these terms and conditions must be agreed to in writing by Seller's authorized signatory.