

TERMS AND CONDITIONS

THE SALE OF PRODUCTS AND SERVICES ("PRODUCTS") BY AVNET ARE SUBJECT TO THESE TERMS AND CONDITIONS ("AGREEMENT") REGARDLESS OF OTHER OR ADDITIONAL TERMS OR CONDITIONS THAT CONFLICT OR CONTRADICT THIS AGREEMENT IN ANY PURCHASE ORDER, DOCUMENT, OR OTHER COMMUNICATION ("ORDER"). PREPRINTED TERMS AND CONDITIONS ON ANY CUSTOMER ("CUSTOMER") DOCUMENT (FOR EXAMPLE: PURCHASE ORDERS OR CONFIRMATIONS.) AND/OR AVNET'S FAILURE TO OBJECT TO CONFLICTING OR ADDITIONAL TERMS WILL NOT CHANGE OR ADD TO THE TERMS OF THIS AGREEMENT.

1. ORDERS. All Orders are subject to acceptance by Avnet. Products quoted as "NCNR" are non-cancelable, non-reschedulable and non-returnable ("NCNR"). Customer may not cancel or reschedule Orders less than 90 days before the scheduled delivery date. All requests for cancellations will be accepted at the discretion of Avnet, and only if Avnet can pass on the cancellation requests to the ultimate manufacturer.

2. PRICES. Avnet's quoted prices apply for 30 days as stated in its quotation unless the time for acceptance is extended by Avnet. Avnet may withdraw any quotation at any time prior to acceptance by Customer. Avnet shall have the right to correct any clerical error appearing on the face of any quotation. Avnet may increase prices if Avnet's costs increase or because of other circumstances beyond Avnet's reasonable control. Unless otherwise agreed, prices are for Products only and do not include GST, packaging, delivery charges and any other charges, fees, and taxes and duties imposed by any government authority. Customer is responsible for any additional fees and taxes.

3. TERMS OF PAYMENT. All invoices are net and are due and payable, without setoff or deduction, as approved by Avnet. On any past due invoice, Avnet may charge interest from the payment due date to the date of payment a 4% per annum above the rate of interest which shall be charged to Avnet by its banker on an overdrawn account, (Such interest shall be payable upon demand and is a genuine pre-estimate of damage resulting from the default), plus reasonable attorney fees and collection costs.

4. OWNERSHIP OF PRODUCTS. Title to Products supplied remains with Avnet until payment is made in full for the Products and for all other Products supplied by Avnet to the buyer. If Customer defaults in making any payments due to Avnet or if any creditor of Customer takes any steps to recover moneys due by Customer or has grounds for taking any such steps then Avnet shall be entitled to enter into any premises and take possession of all Products supplied by Avnet.

5. DELIVERY AND RISK. Avnet shall be responsible for arranging delivery of the Products to the address of Customer or to the otherwise agreed upon place by the parties. The Products shall be at the risk of Customer from time of their departure from the premises of Avnet as to any loss, damage, or deterioration for any reason or howsoever caused. Any such occurrence shall not relieve Customer from Customer's obligation to pay the agreed price. If Customer refuses to accept delivery, delivery shall nevertheless be deemed to have been made. Avnet's delivery dates are estimates only and Avnet is not liable for delays in delivery. Delivery may be made by installments. If this occurs each installment may be separately invoiced and Customer shall pay for each installment as if it were a separate Order. A delayed delivery of any part of an Order does not entitle Customer to cancel other deliveries.

6. INSURANCE While any moneys are owing to Avnet Customer shall keep all the Products supplied by Avnet safely stored and fully insured.

7. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS. The Buyer shall ensure that the carrier's copy of the delivery note is endorsed at the time of delivery. Customer must notify Avnet in writing of any visually observable damage to the outer packaging of Products, shortage, or other discrepancy to Products within 3 days after receipt. After the 3rd day Customer is deemed to have accepted the Products and may not revoke acceptance. Customer cannot return Products without a return material authorization ("RMA") number. Returned Products must be in original manufacturer's shipping cartons or equivalent. Customer must return all Products, freight prepaid, as specified in the RMA. Customer must include a complete description of defect when returning defective Products. At Avnet's discretion, Avnet will return all Products not eligible for return to Customer freight collect, or hold Product for Customer's account at Customer's expense.

8. AVNET'S LIMITED WARRANTY. Avnet will transfer to Customer any Product warranties and indemnities authorized by the manufacturer, including any transferable warranties and indemnities for intellectual property infringement. Avnet warrants the Products will conform to the manufacturer's specifications. Value-added work performed by Avnet on Products will conform to Customer's specifications. **TO THE FULLEST EXTENT PERMITTED BY LAW, AVNET MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED. AVNET MAKES NO WARRANTY OF MERCHANTABILITY, FITNESS FOR PURPOSE OR NON-INFRINGEMENT.** If Products do not meet manufacturer's specifications or if value-added work by Avnet does not meet Customer's specifications, Avnet will, at Avnet's choice, (1) repair; or (2) replace the Products at no cost to Customer; or (3) refund Customer of the Products purchase price. Customer must return Products to Avnet, along with acceptable proof of purchase, within 30 days from date of delivery, freight charges prepaid.

9. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, AVNET IS NOT LIABLE FOR AND CUSTOMER IS NOT ENTITLED TO ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; FOR EXAMPLE, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, REWORK, MANUFACTURING EXPENSE, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS. CUSTOMER'S RECOVERY FROM AVNET FOR ALL DAMAGES WILL NOT EXCEED THE PRICE OF THE PRODUCT AT ISSUE. CUSTOMER WILL INDEMNIFY, DEFEND AND HOLD AVNET HARMLESS FROM ANY CLAIMS BASED ON: (i) AVNET'S COMPLIANCE WITH CUSTOMER'S DESIGNS, SPECIFICATIONS, OR INSTRUCTIONS, (ii) MODIFICATION OF ANY PRODUCTS BY ANYONE OTHER THAN AVNET, OR (iii) USE IN COMBINATION WITH OTHER PRODUCTS.

10. FORCES BEYOND AVNET'S CONTROL. Avnet is not liable for failure to fulfill its obligations for any accepted Order or for delays in delivery due to causes beyond its reasonable control, (for example: acts of God, acts or omissions of the Customer, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, acts of terrorism, delays in transportation, or inability to obtain labor or materials through its regular sources).

11. USE OF PRODUCTS. Products are not authorized for use in critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. If Customer uses or sells the Products for use in any such applications, Customer acknowledges that such use or sale is at Customer's sole risk. Customer will indemnify, defend and hold Avnet and the Product manufacturer harmless from and against any and all liabilities and costs arising out of or in connection with such use or sale.

12. EXPORT/IMPORT. Certain Products sold by Avnet and other related technology and documentation are subject to export control laws, regulations and orders of the United States and the export or import control laws and regulations of other countries. Customer will not directly or indirectly export or divert any Products and other related technology and documentation to any third party or country where such export or transmission is restricted or prohibited. Customer agrees it is responsible to obtain any license to export, re-export, or import as may be required.

13. PRODUCT INFORMATION. Product information, including information related to a Product's specifications, export/import control classifications, uses or conformance with legal or other requirements, is obtained by Avnet from its suppliers or other sources. Such information is provided by Avnet on an "AS IS" basis, makes no representation as to the accuracy or completeness of the Product information, and disclaims all representations, warranties and liabilities under any theory with respect to the Product information. Avnet recommends Customer validate any Product Information before using or acting on such information. All Product information is subject to change without notice. Avnet is not responsible for typographical or other errors or omissions in Product information.

14. PRIVACY ACT CONSENT. Customer hereby authorizes Avnet to disclose the information Customer has supplied in this application as required for credit reference purposes and Customer hereby authorizes any person or company to provide Avnet with any information requested by Avnet for credit reference purposes.

15. EXCHANGE RATE VARIATION. Where an exchange rate variation clause has been agreed between the Customer and Avnet, the variation of the sales price (higher or lower) will be calculated as follows:

- (1) when the percentage rate between the base rate (agreed rate) and current rate (Bloomberg rate of the day) varies by more than the agreed variation (in absence of an agreed variation) then plus or minus 2 percent ($\pm 2\%$) then;
- (2) a credit or debit will be applied to 85 percent of the sale's value by the rate of variation between the base rate and the current rate.

16. GENERAL.

- a. This Agreement shall be governed and construed by the laws of the State of Victoria, Australia and each party submits to the exclusive jurisdiction of the courts of the State of Victoria, Australia and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement. The United Nations Convention for the International Sale of Goods shall not apply.
- b. Customer may not assign this Agreement without the prior written consent of Avnet. Avnet or its affiliates may perform the obligations under this Agreement. This Agreement is binding on successors and assignees.
- c. This Agreement can only be modified in writing signed by authorized representatives of both Avnet and Customer.
- d. Statements or advice (technical or otherwise) if given without charge, are an accommodation to Customer and Avnet has no responsibility or liability for the content or use of such statements or advice.
- e. Avnet's failure to object to any document, communication, or act of Customer will not be deemed a waiver of any of these terms and conditions.
- f. The unenforceability of any of these terms or conditions will not affect the remainder of the terms or conditions.
- g. Products, including software or other intellectual property, are subject to any applicable rights of third parties, such as patents, copyrights and/or user licenses.
- h. Customer and Avnet will comply with applicable laws and regulations.