

BOURNS®

TERMS AND CONDITIONS OF SALE

1. CONTRACT

All orders (hereinafter “Orders” or “Contracts”) accepted by Bourns, Inc. and its subsidiaries (individually hereinafter “Seller”) are on the express condition that these Terms and Conditions of Sale and order information set forth on Seller’s acknowledgment shall constitute the complete and exclusive written expression of the terms of the agreement between the parties, regardless of any conflicting, inconsistent or additional provisions proposed by the buyer hereunder (“Buyer”), and shall supersede all prior or contemporaneous proposals (oral or written), understandings, representations, conditions, warranties, covenants, and all other communications between the parties relating to the subject matter of such Order. Seller will proceed on this basis unless an express written objection by Buyer is received within ten (10) days of Seller’s acknowledgment. The Terms and Conditions of Sale as set out herein may not in any way be explained, interpreted or supplemented by a prior or existing course of dealings between the parties, by any usage of trade or custom, or by any prior performance between the parties pursuant to this Contract or otherwise and may not be modified in any way by any subsequent proposals, acknowledgments, or other communications which relate to this Contract, unless specifically agreed to in writing by Seller. Seller is not responsible for typographical errors made in any of its publications, or for stenographic or clerical errors made in preparation of quotations, acknowledgments, or specifications. All such errors are subject to correction. All prices are based on the quantity and delivery shown on the Seller’s quotation or acknowledgment.

2. PRICE, QUANTITY AND TAXES

The prices and quantities set out herein represent the quantity information contained in Buyer's Order to Seller, and Seller's agreed-to price therefore, and shall be controlling unless specifically objected to by Buyer within ten (10) days from the date hereof. In case of an objection, both parties shall in good faith seek to reach an agreement. Seller reserves the right to over or under ship the quantities specified on Buyer's purchase order by up to 5% for any Goods other than those that are standard, stock adjustable. Buyer agrees to accept such over or under shipment as complete shipment. Buyer shall be invoiced for quantities actually shipped. Buyer agrees to pay all applicable sales, value added, withholding or any other tax, tariff, duty or fee imposed as a result of sale or delivery of any Goods, other than taxes based on Seller’s income, or in lieu thereof, Buyer shall provide Seller with a valid resale or exemption certificate acceptable to taxing authorities. If Buyer is required to withhold tax from payments to Seller, then Buyer shall promptly furnish Seller with original tax receipts issued by the taxing authority evidencing payment.

3. TERMS OF PAYMENT

Payment terms are net thirty (30) days from date of invoice, unless otherwise specified on the invoice. Seller may at any time, when in its opinion the financial condition of the Buyer warrants it, either alter or suspend credit. Overdue accounts will be considered grounds for withholding shipments, canceling any or all Contracts, or requiring payment in advance or C.O.D., at Seller’s option. Seller, at its option, may charge Buyer finance charges on overdue invoices in amounts or at rates not to exceed the maximum amounts or rates permitted by law. Each shipment shall be considered a separate and independent transaction and therefore payment shall be made accordingly without any set offs. If shipments are delayed by or at the request of Buyer, Buyer agrees to make payments net thirty (30) days from the date when Seller is prepared to make shipment.

4. SHIPMENTS/TITLE TRANSFER

All shipments are FCA Seller's place of shipment Incoterms® 2010 unless otherwise agreed to in writing by Seller. Seller assumes no liability for loss, delay, breakage, or damage after delivering packaged Goods to the common carrier. There is no extra charge for standard packaging for domestic shipment. All other transportation costs, including but not limited to special packaging, duties or taxes, are the sole responsibility and liability of Buyer. Seller shall determine the choice of common carrier and whether shipment is to be collect or prepaid and billed to Buyer, unless specified by Buyer in writing. Cost for insurance will be included in the shipping costs to be paid by Buyer unless Buyer specifically requests in writing that shipments not be insured and acknowledges liability for all risks thereof. Title and risk of loss or damage to the Goods transfers to Buyer at the time the Goods are transferred to the common carrier unless otherwise agreed to in writing by Seller.

5. DELIVERY

The shipment date set out herein is Seller's best estimate of the time Goods will be shipped from its factory, and Seller assumes no liability for loss, damage, or consequential damages due to delays for any reason. In no way shall Seller be bound to a firm shipment or delivery date, regardless of the wording in Buyer's purchase order, unless expressly agreed to in writing by Seller.

6. ACCEPTANCE

Final acceptance or rejection of the Goods shall be made as promptly as practical after delivery to Buyer. However, unless earlier formally rejected or accepted, the Goods shall be deemed by the parties to be accepted thirty (30) days after delivery to Buyer. Upon acceptance of each unit of Goods, Buyer waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. Buyer's sole and exclusive remedy regarding any defect or nonconformance becoming apparent in the Goods after such acceptance shall be as set out in Clause 13 hereof (Warranty).

7. RETURNS

A. The parties agree that Buyer shall be entitled to reject an entire installment shipment only if: (i) the shipped Goods fail to meet Seller's standard acceptance level (or the agreed acceptance level, if specified in writing), (ii) Seller receives written notice of such failure to meet the acceptance level with full explanation within thirty (30) days from date of shipment by Seller, and (iii) such failure is substantiated. In such event, Seller will either correct such failure or authorize return.

B. The rejection of any installment shipment shall not be considered grounds for cancelling the entire Contract. All returns of any nonconforming Goods within the applicable acceptance level shall be handled exclusively under the Warranty provisions in Clause 13.

8. CHANGES

Any changes by Buyer relating to the work to be performed, method of shipment or packing, schedule, or place of delivery must be made by written order to Seller. If such changes cause an increase or decrease in the cost of performance or in the time required for performance, the parties shall negotiate an equitable adjustment promptly in good faith and the Contract shall be modified in writing accordingly, provided that any changes which decrease the quantity of Goods ordered shall be governed by the terms of Clause 9 below. Seller shall have ninety (90) days from receipt of a written request for change in which to claim an adjustment under this clause.

9. CANCELLATION/RESCHEDULING

In the event of cancellation or rescheduling of all or any part of the Contract by Buyer, Seller shall be entitled to be paid cancellation and/or rescheduling charges, as reasonably determined by Seller, except as otherwise expressly agreed in writing by Seller. Such charges shall include all expenses, liabilities, and obligations incurred with respect to manufacturing the Goods, storing the Goods, or contracting manufacture of the Goods, plus an allowance for a reasonable profit.

10. FORCE MAJEURE

In no event shall Seller be liable for any losses or damages (including incidental or consequential damages), delays or defaults occasioned by: (i) acts of God or of a public enemy, (ii) acts of the United States or foreign Governments, or any state or political subdivision thereof, (iii) fires, floods, explosions or other catastrophes, (iv) epidemics and quarantine restrictions, (v) strikes, slowdowns, or labor stoppages of any kind, (vi) freight embargoes, (vii) unusually severe weather, (viii) delays of a supplier, (ix) terrorist activity, or (x) causes beyond the control of Seller.

11. NON-APPROVED APPLICATIONS

Buyer and end-users are ultimately responsible for selecting and testing Bourns® products for their particular applications. The limitations on Seller's responsibility for use of its Goods in high risk applications, such as nuclear, certain medical, aircraft/aerospace and automotive, is described in more detail in the Legal Disclaimer Notice. The full text of the Legal Disclaimer Notice (together with several bi-lingual versions) can be found at:

Web Page: <http://www.bourns.com/legal/privacy-policy>; and
PDF: <http://www.bourns.com/docs/Legal/disclaimer.pdf>.

12. TESTING

RESERVED.

13. WARRANTY

A. ***Warranty and Exclusions.*** Seller warrants to Buyer that all Goods furnished by Seller pursuant to Buyer's purchase orders: (i) at the time of shipment shall be compliant with Seller's specifications in effect at the time of manufacture, and (ii) for a period of twenty-four (24) months from the date of shipment under normal handling, storage and use, shall be free from defects in design, materials and workmanship. Excluded from Seller's warranty are prototypes, samples, manufacturing engineering work requests (MEWR), dummy parts or similar Goods and Goods that have been: (i) subject to abuse, misuse, neglect, accident, improper installation, or a use contrary to Seller's written instructions, (ii) altered or repaired by a person other than one expressly authorized by Seller in writing, or (iii) obtained from a non-Seller authorized source. For the avoidance of doubt, Goods that are not manufactured by or for Seller (e.g.: Counterfeit Goods) are excluded from Seller's warranty. Goods expressly warranted by Seller and reasonably determined by Seller not to conform to the warranty provisions of this Subsection A are referred herein to as Non-Conforming Goods.

B. ***Claim Procedure.*** Buyer shall notify Seller reasonably promptly after discovery of any Non-Conforming Goods. Buyer shall not return any Goods to Seller without the prior written authorization of Seller. Upon receipt of Seller's authorization and written instructions, Buyer shall return the Goods to Seller in accordance with such written instructions. Seller shall examine the Goods returned by Buyer. If Seller reasonably verifies that the returned Goods are Non-Conforming Goods, Seller shall provide Buyer with one (1) of the remedies set forth in Subsection C below.

C. **Remedies.** Seller, at its option, shall repair or replace, or refund the purchase price of, Non-Conforming Goods, or, if mutually agreed by Seller and Buyer, the purchase price of the Non-Conforming Goods shall be reduced by a mutually agreed amount. Seller shall not be obligated to repair or replace a Non-Conforming Good located in an embargoed country. Seller's obligations and Buyer's remedies with respect to Non-Conforming Goods are solely as set forth in this Subsection C.

D. **Limitations.** Seller's express warranty set forth in Subsection A is the only warranty with respect to Goods furnished pursuant to Buyer's purchase order(s). **SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN OR STATUTORY, OR EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS.** Seller's total liability for Non-Conforming Goods shall not exceed the cost of the remedy selected by Seller at its option pursuant to Subsection C above.

14. INTELLECTUAL PROPERTY; INFRINGEMENT

A. In regard to any Goods that Buyer purchases from Seller, no patents, trademarks, copyrights, trade secrets, or other intellectual property rights of Seller are transferred to Buyer other than: (i) an implied license to use the Goods for its intended purposes, and (ii) to the extent that any Seller software is embedded in the Goods, a royalty free, non-exclusive license to use such software in object code form for its intended purposes as embedded in the Goods for the life of the Goods.

B. Except as set forth herein, Seller shall defend and indemnify Buyer from and against all costs, expenses, liabilities, fees and damages arising from any claim or action to the extent that it asserts that any Goods purchased by Buyer from Seller misappropriates a trade secret or infringes any patent, trademark or copyright of any third party in the United States, provided that Buyer gives Seller: (i) prompt written notice of any such claim or action asserted against Buyer, (ii) the exclusive right to control and direct the investigation, defense and settlement of such claim or action, and (iii) full cooperation in the defense or settlement of such claim or action, including providing all data, information or knowledge in Buyer's possession or control relating to such claim or action. Buyer shall have the right to participate in its own defense of such claim or action, at its own expense, with counsel of its own choosing.

C. Seller shall have no liability or obligations to Buyer with respect to any claim or action relating to: (i) any Goods made or sold by Seller in accordance with Buyer's specifications or designs, (ii) Buyer-modified versions of Seller-supplied Goods, or (iii) the combination of Seller-supplied Goods with equipment, products, processes and/or services not supplied by Seller, provided that such infringement or misappropriation could have been avoided by a different combination or by the use of the unmodified Seller-supplied Goods alone.

D. In the event that Goods or any technology or process utilized by Seller to manufacture Goods for Buyer is held in any action or proceeding to directly infringe or misappropriate any United States patent, copyright, trademark, trade secret or other intellectual property right of a third party and its use is enjoined, or if in the opinion of Seller such Goods, technology or process is, or is likely to become, the subject of such a claim of direct infringement or misappropriation, Seller, at its own expense, shall have the right to: (i) procure for Buyer the right to continue using the Goods, (ii) replace or modify the Goods to make it non-infringing but reasonably functionally equivalent, or (iii) refund the purchase price and pay the shipping costs for the return of the Goods to Seller. Seller, thereafter, may cancel all open Contracts and terminate all future Contracts for such Goods and may decline acceptance of any future orders for such Goods without liability to Buyer or otherwise. Seller disclaims any implied warranties of non-infringement, liability for contributory infringement and inducement to infringe, and the rights and remedies set forth herein are the exclusive rights and remedies of Buyer with respect to claims of intellectual property infringement or misappropriation concerning Seller's Goods.

15. BUYER'S DATA

Buyer agrees that all data furnished by Buyer in conjunction with its Contract, together with any information furnished orally, shall be free from proprietary or confidentiality restriction except as otherwise agreed in writing by Seller.

16. ASSIGNMENT

Neither this Contract nor any interest herein may be assigned by Buyer either voluntarily or by operation of law without the prior written consent of Seller. No consent shall be deemed to relieve Buyer of its obligations to fully comply with the requirements hereof. Seller may, without Buyer's consent, assign any moneys due or to become due hereunder.

17. GOVERNING LAW AND JURISDICTION

All Contracts accepted by Bourns, Inc. or Bourns Ventas S. de R.L. de C.V. and any disputes related to or arising therefrom shall be governed, construed and resolved, according to the laws of the State of California in effect on the date hereof. Exclusive jurisdiction and venue for such Contracts shall lie in the courts of the State of California located in the City of Riverside.

All Contracts accepted by Bourns Electronics GmbH and any disputes related to or arising therefrom shall be governed, construed and resolved, according to the laws of Germany in effect on the date hereof. Exclusive jurisdiction and venue for such Contracts shall lie in the courts located in Frankfurt, Germany.

All Contracts accepted by Bourns Trading (Shanghai) Co., Ltd. and any disputes related to or arising therefrom shall be governed, construed and resolved, according to the laws of Singapore in effect on the date hereof. Exclusive jurisdiction and venue for such Contracts shall lie in the courts located in Singapore.

All Contracts accepted by any other subsidiary of Bourns, Inc. and any disputes related to or arising therefrom shall be governed, construed and resolved, according to the laws of the country of formation of such subsidiary. Exclusive jurisdiction and venue for such Contracts shall lie in the courts of the country of formation of such subsidiary.

In all cases, the provisions of the United Nations Convention on Contracts for the International Sales of Goods (“CISG”) and any choice of law provisions that require the application of other law are hereby excluded.

18. GENERAL

A. Seller may immediately terminate this Contract in the event of the happening of any of the following: (i) the insolvency of Buyer, (ii) the filing by Buyer of a voluntary petition in bankruptcy, (iii) the filing of an involuntary petition to have Buyer declared bankrupt, (iv) the appointment of a Receiver or Trustee for Buyer, or (v) the execution by Buyer of an assignment for the benefit of creditors. The exercise by Seller of the right of termination reserved in this Clause 18.(A) shall not impose any liability upon Seller by reason of the termination or have the effect of waiving damages which Seller might otherwise be entitled to.

B. Seller reserves the right to make changes in design, at any time, without incurring any obligations to provide same on Goods previously purchased or to continue to supply obsolete Goods.

C. Buyer agrees to strictly observe all import/export control regulations and such other similar or analogous restrictive laws or regulations promulgated by the United States Government or other legal authority in any country as may apply to the export by Buyer of Goods, services and/or technical data, including those applicable to Goods, services or technical data purchased or obtained from Seller.

D. The invalidity in whole or in part of any provision of this Contract shall not affect the validity of other provisions. Seller's failure to insist, in any one or more instances, upon the performance of any term or terms of this Contract shall not be construed as a waiver or relinquishment of Seller's right to such performance or to future performance of such a term or terms, and Buyer's obligation in respect thereto shall continue in full force and effect.

E. Seller represents that with respect to the production of Goods and services covered by this Contract, it will comply with applicable United States federal and state labor and environmental laws.

19. GOVERNMENT CONTRACTS

To the extent this Contract is entered into to satisfy U.S. Government supply requirements, Seller agrees only to those provisions or clauses of the Federal Acquisition Regulation (FAR) or other Government Regulation clauses which Buyer includes in its purchase order and which are required by law to be incorporated into a fixed price supply subcontract, and which are expressly accepted by Seller. No other clauses shall be included in this Contract unless specifically agreed to in writing by Seller.

Accepted and Agreed to by

Buyer's Legal Name: _____

Signature: _____

Name: _____

Title: _____

Date: _____