

THERMACTIVE ELECTRONICS, LLC
TERMS & CONDITIONS of SALE

In these terms and conditions, "Merchandise" means those items described in Seller's purchase order confirmation; "Seller" means ThermActive Electronics, LLC; "Buyer" means the firm or person by whom the Merchandise is to be purchased and/or its assignees.

1. ACCEPTANCE of ORDERS

All orders shall be considered as an offer from the Buyer. Acceptance of any order shall occur upon confirmation by Seller to the Buyer of the merchandise ordered. Any order for merchandise not in Seller's stock shall be contingent upon receiving from Seller's normal supplier all of the merchandise ordered. Seller's inability or failure to obtain all or any part of merchandise ordered from Seller's normal supplier shall automatically constitute non-acceptance of the part of the order that was not obtained. Any item ordered that is not a standard cataloged item is considered a "special" item, and as such the Buyer's order for a "special" item is Non-Cancelable and any "special" items are Non-Returnable. Seller reserves the right to ship and bill a percentage of the exact quantity ordered. All orders, invoices, statements and other documents are subject to correction of errors by Seller.

2. PRICE

Except as otherwise provided in Seller's valid quotation, order confirmation or invoice by Seller, all prices are F.O.B. point of shipment. At any time before 30 days prior to shipment, Seller may notify Buyer of price increases that Seller considers necessary or appropriate because of increases in costs. Buyer may accept the increased prices or terminate the order subject to the increased prices. If within 10 days after giving notice of increased prices, Seller does not receive from Buyer notice of termination, Buyer shall be deemed to have accepted the increases. Prices are subject to change by Seller's discretion in the event of any changes in Buyer's specifications, delivery or other requirements approved by Seller under Paragraph 6.

3. TAXES

Unless otherwise specifically stated in the invoice or order confirmation, prices do not include city, county, state, Federal or other taxes imposed on Merchandise.

4. TERMS

Payment for all Merchandise is due and shall be paid according to the terms appearing on the face of the invoice or purchase order confirmation from the Seller. In the absence of such terms, payment shall be 1% 10 days; net 30 days. Any amount not paid on the date it is due shall accrue interest at a rate of 18% per annum.

5. SHIPPING and DELIVERY

In the absence of prior instructions from the Buyer, Seller will select the carrier for the shipment. Seller's responsibility for any loss or damage ends and title passes to the Buyer when the merchandise is delivered to the carrier. Delivery dates and schedules are good faith estimates only, and Seller shall not be liable or responsible for failure to meet specific delivery, shipment or related dates. All orders are F.O.B. point of shipment. If Buyer fails to take delivery promptly of the Merchandise when tendered, any cost, loss or damage arising from such failure shall be at the Buyer's sole risk and expense.

6. CHANGES

No changes in the terms set forth or in specifications or other matters relating to the Merchandise or the transactions shall be binding on Seller, without Seller's written consent. Any cancellation by Buyer of all or any portion of an order shall be subject to cancellation charges, not to exceed the aggregate price on the order, determined by Seller on the basis of special materials, parts in process, special tools relating to the canceled order and other costs or expenses reasonably relating to the cancellation.

7. SECURITY INTEREST

Until Seller receives payment in full for the Merchandise, Seller shall retain a purchase money security interest in the Merchandise and Seller may (and Buyer appoints Seller its Attorney-in-fact to) file financing statements or other documents or instruments to perfect such security interest. With respect to the security interest, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable law, and the parties agree that 10 days advance notice is sufficient and commercially reasonable for any foreclosure, sale or disposition or other action with respect to the Merchandise.

8. CLAIMS

Buyer or its agent shall inspect or test all goods upon receipt. Buyer waives any right to assert a claim against Seller arising from any non-conformity which would have been observable on reasonable inspection or testing at the time of delivery, unless Seller is advised of the nonconformity within 72 hours after receipt of such goods by Buyer. In no event shall any goods under claim be returned, reworked or scrapped by Buyer without the express written authorization of the Seller. In the event of non-conformity, Buyer's sole and exclusive remedy will be limited to the repair or replacement of any non-conforming goods or to the repayment of the portion of the purchase price paid by Buyer attributed to the non-conforming item. Availability of remedies shall be subject to Buyer's return of the non-conforming Merchandise, in substantially the condition delivered to Buyer, to a place designated by Seller. Under no circumstance shall seller be under any other liability (and in particular shall not be liable for any consequential, incidental, punitive or indirect losses, including any lost profit(s)).

9. WARRANTY and DISCLAIMER

- A. Seller warrants that the Merchandise, when used in a reasonable manner in the ordinary course, will be free from defects of material or workmanship for a period of one year after shipment. Seller's sole and exclusive responsibility under this warranty shall be, at its own expense, to repair or replace any defective Merchandise returned to Seller by Buyer at Seller's facility, or such other places as Seller may direct, with Buyer to bear all transportation and shipping costs.
- B. The warranty in Subparagraph A does not apply to any defects or damage caused in shipment or by the negligence or other misconduct of Buyer or any of its agents, employees, or contractors, or caused by, or arising from Buyer's specifications or special instructions or directions. Seller shall have no responsibility for any claim by Buyer under the warranty in Subparagraph A unless Buyer notifies Seller of the claim within one week after discovering the defect and in any event within one year of shipment.
- C. EXCEPT AS EXPRESSLY PROVIDED IN SUBPARAGRAPH A, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE GOODS. ALL EXPRESS OR IMPLIED WARRANTIES NOT EXPRESSLY STATED IN SUBPARAGRAPH A., INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

10. FORCE MAJEURE

Seller shall not be responsible or liable for delays in manufacture, shipping or delivery or other elements of performance because of causes beyond its reasonable control. Seller shall provide notice at the earliest practicable time in the event of non-fulfillment or delayed performance of all or any part of any contract for the sale of Merchandise, due, directly or indirectly, to any Act of God, government orders, rules or restrictions, fire, flood, war, strikes, labor disputes, transportation delays, loss or damage to the Merchandise in transit, Seller's inability to obtain or ship the goods, the failure of any third party to supply Seller with the Merchandise, or any other casualties, contingencies or conditions whatsoever beyond the reasonable control of Seller (collectively, a "Force Majeure Event"). Following such notice, Seller shall have such additional period of time, up to 60 days, to fulfill performance, and if Seller cannot fulfill performance within such period due to the Force Majeure Event then either party shall have the option to perform or cancel the contract or any unfilled portion thereof, at no penalty or cost to Seller.

11. COMPLIANCE with LAWS

It is the intention of the parties that the transactions covered by these Terms and Conditions with respect to such transactions be in conformance with all applicable laws, regulations, executive orders and other mandatory governmental standards, and conditions. Washington state law shall govern the validity, construction, interpretation and effect of these terms and conditions and all transactions or agreements in any manner relating to the goods or other matters.

12. ENTIRE AGREEMENT and ASSIGNMENTS

The terms and conditions set forth herein constitute the entire contract between Seller and Buyer, relating to the sale of goods, acceptance is limited to the terms of these terms and conditions and no additional or different terms proposed by Buyer shall become part of the contract between Seller and Buyer unless Seller expressly agrees in writing. This contract prevails over any and all inconsistent terms proposed by Buyer in any purchase order issued by Buyer or otherwise. Acceptance of Buyer's order by Seller is expressly made conditional on Buyer's assent to these terms and conditions of sale, evidenced either by Buyer's written acknowledgement or by conduct that recognizes the existence of a contract with respect to the goods described in Seller's purchase order confirmation or invoice.