

# ADVANCE COMPONENTS, INC. Terms and Conditions of Sale

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### Terms and Conditions of Sale

**1. OFFER, GOVERNING PROVISIONS AND CANCELLATIONS:** This writing constitutes an offer or counter-offer by Advance Components, Inc. ("Seller") to sell the products and/or services described herein in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Buyer, and acceptance of this offer is expressly conditioned upon Buyer's assent to these terms and conditions. Buyer will be deemed to have assented to these terms and conditions when:

(a) Buyer signs and delivers to Seller an acknowledgement copy of any of Seller's sales order, quotation, order Acknowledgment or invoice forms;

(b) at Seller's option, Buyer shall have given to Seller (orally or in writing) specifications of quantity and/or type of goods, assortments thereof, delivery dates, shipping instructions, instructions to bill, or the like as to all or any part of the merchandise herein described;

(c) Buyer has received delivery of the whole or any part thereof; or

(d) Buyer has otherwise assented to the terms and conditions hereof. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing by an officer of Seller at Carrollton, Texas; no other representative has any authority to waive, Alter, vary or add to the terms hereof. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication heretofore or hereafter received from Buyer. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER, AND SHALL BE GOVERNED BY AND SHALL BE CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF TEXAS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. No order may be cancelled or altered by the Buyer except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent and Seller shall be entitled to a re-stocking fee of 20% for returned orders, should Seller agree to accept such orders.

**2. PRICES:** As explained on the face of this form, the prices for the products and/or services there set forth are Seller's prices for such products and/or services with all of the terms in this form, including the exclusive Warranty and the various disclaimers and limitations of liability enforceable against the Buyer. If Buyer desires for Seller to provide a greater, or additional warranty and/or to be liable for some or all of the disclaimed or limited liability, the prices set forth on this offer are not available, and the Buyer must notify Seller before Buyer accepts this offer (or is deemed to accept it) pursuant to paragraph 1 above. Seller will then make a new offer containing prices reflecting that additional exposure. In the absence of such a new offer, all of the terms in this form shall be enforceable. By accepting this offer, Buyer understands that it is foregoing the possibility of, among

other things, recovery of consequential damages from Seller and of indemnity for tort liability in exchange for Buyer obtaining a lower sales price for the products and/or services. All prices listed are payable in United States Dollars. All prices are subject to change without notice. Seller's receipt of Buyer's P.O. does not confirm pricing. Seller must fully process all orders before pricing is confirmed. Payment is due net 30 days after Buyer's receipt of Seller's invoice, unless Seller requires payment in advance, or unless the face of this form states different terms. Notwithstanding the above, at its option at any time, Seller may require Buyer to make payment by irrevocable letter of credit, and may defer shipment or cancel any order if the Buyer does not promptly provide such a letter of credit. In that event, the letter of credit shall be issued for Seller's benefit by a prime U.S. bank, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 290, 1974 Revision), shall provide for payment against Seller's invoice and bill of lading, and shall be in form and substance satisfactory to Seller. Interest will be charged at the rate of 18% per year (or such lesser sum as is the highest rate permitted by applicable law) on accounts past due.

**3. QUANTITIES:** For each individual item ordered hereunder, Buyer agrees to accept overruns or under runs not exceeding 10% of the quantity set forth on the face of this form, unless a provision for closer control over quantity is expressly stipulated on the reverse side hereof.

**4. TAXES AND OTHER CHARGES:** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the Buyer's shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, the Buyer shall reimburse Seller thereof; or in lieu of such payment, the Buyer shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same.

**5. DELIVERY, CLAIMS AND FORCE MAJEURE:** The shipping terms for all products sold hereunder are F.O.B. Seller's warehouse in Carrollton, Texas, U.S.A., unless otherwise stated on the reverse side hereof. Delivery of products to a carrier at Seller's plant or other loading point shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Buyer. Purchases valued in excess of \$100 will be shipped insured. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Method and route of shipment shall be at the discretion of Seller unless Buyer shall specify otherwise; any additional expense of the method or route of shipment specified by Buyer shall be borne entirely by Buyer. Buyer shall bear all costs of bags, barrels, boxes, pallets or other container used to ship products sold hereunder. No shipping containers may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by Buyer. Claims for shortages or other errors in delivery must be made in writing to Seller within 15 days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance of all shipments made prior to Seller's receipt of Buyer's notice of claim, and shall constitute a waiver of all such claims by Buyer. Claims for loss or damage to products in transit should be made to the carrier and not the Seller. All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of the Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or, without limiting the

foregoing, any other delays beyond the Seller's control. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason including Buyer's inability to produce goods which meet the requirements of this contract shall be rescission of this agreement.

**6. STORAGE:** If the products are not shipped within 15 days after notification to the Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including the Buyer's failure to give shipping instructions, Seller may store such products at the Buyer's risk in warehouse or yard or upon Seller's premises, and the Buyer shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefore.

**7. CHANGES:** Seller may at any time make such changes in design and construction of products as Seller deems appropriate, without notice to Buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

**8. QUALITY CONTROL:** Prior to shipment, Seller shall inspect the products on a percentage basis only, in accordance with its standard practice of quality control. Seller shall not provide 100% inspection or employ AQL procedures unless expressly stated on the reverse side hereof.

**9. WARRANTIES:** Seller warrants that the products manufactured by its suppliers and supplied hereunder shall conform to the dimensions and specifications of manufacturer's standard parts as shown in Seller's/manufacturer's catalog(s), or to Buyer's print dimensions, tolerances and material specifications, if provided. In absence of specific requirements provided by Buyer in writing, product tolerances shall be judged against commercial tolerances, custom, usage and practices generally accepted in industry, based on standard procedures employed without the use of additional operations or tooling. If any such product shall be proved to Seller's satisfaction to be nonconforming, Seller shall have the option to credit the purchase price of such product or repair or replace such product. Such credit, repair or replacement shall be Seller's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned upon Seller's receiving written notice of any alleged nonconformity within 15 days after receipt of shipment and, at Seller's option, return of such products to Seller, F.O.B. its factory. Products supplied by Seller hereunder which are manufactured by someone else are not warranted by Seller in any way, but Seller agrees to assign to Buyer any warranty rights in such products that Seller may have from the original manufacturer.

THE WARRANTY CONTAINED IN THIS SECTION 9 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES (EXCEPT OF TITLE), EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace nonconforming products, or credit the purchase price, within ninety (90) days of the date which Seller determines that such products are nonconforming. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

**10. COMPLIANCE WITH LAWS:** Seller strives to comply with the provisions of all federal, state and local laws, standards and regulations for which liability may accrue to Buyer for violation thereof. However, Seller does not warrant that the products supplied hereunder meet the requirements of any

local, state or federal laws or regulations, including those issued under OSHA.

**11. RETURNS:** Products IN STOCK may be returned to Seller only when Seller's written permission, signed by duly authorized personnel of Seller, shall be obtained by Buyer in advance. Goods may not be returned unless they are in marketable condition. Returned products must be securely packaged and reach Seller without damage. Any cost incurred by Seller to put products in marketable condition will be charged to Buyer. Seller reserves the right to charge a restocking fee. Products ORDERED SPECIFICALLY FOR BUYER are non-cancelable/non-returnable (NCNR) and buyer assumes full responsibility for such products. This includes products that have been ordered from and manufactured by our suppliers, materials purchased for products by our suppliers and products in process by our suppliers, and products already shipped to you or that are being held in inventory by you. As such, purchase orders issued by buyer for products ordered specifically for buyer cannot be cancelled and the product cannot be returned for any other reason other than manufacturing defect.

**12. PATENTS, TRADEMARKS AND COPYRIGHTS:** Seller will, at its own expense, defend any suits that may be instituted by anyone against Buyer for alleged infringement of any United States patent, trademark, or copyright relating to any products manufactured and furnished by Seller hereunder, if such alleged infringement consists of the use of such products, or parts thereof, in Buyer's business and provided Buyer shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon Buyer and permit Seller through its counsel, either in the name of Buyer or in the name of Seller, to defend the same and give all needed information, assistance and authority to enable Seller to do so. If such products are in such suit held in and of themselves to infringe any valid United States patent, trademark or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such products by Buyer is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure for Buyer the right to continue using the products, (ii) modify the products to render them non-infringing, (iii) replace the products with non-infringing goods, or (iv) refund the purchase price and the transportation costs paid by Buyer for the products. Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and no event shall Seller be liable for consequential damages attributable to an infringement. As to any products furnished by Seller to Buyer manufactured in accordance with drawings, prints, designs, samples or specifications proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of products sold hereunder, Seller shall not be liable, and Buyer shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary right of third parties. The purchase of any products hereunder does not entitle Buyer to employ the same in any patented process.

**13. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; BUYER'S INDEMNITY:** Seller's liability with respect to breaches of warranty shall be limited as provided in Section 9 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT

LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slowdown costs, spoilage of material, or for any other type of economic loss. All the limitations and disclaimers contained in this paragraph and in the rest of this contract shall apply to claims of Buyer's customers or any third party asserted by Buyer against Seller for indemnity or contribution, as well as direct claims of Buyer against Seller. Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without

limitation, attorneys fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

**14. TECHNICAL INFORMATION:** Any sketches, models, samples or designs submitted by Seller shall remain the property of Seller, and shall not be treated as confidential information unless the Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of the Seller.

**15. TOOLING:** Unless otherwise agreed, any dies, tools or gages ("Tooling") which Seller manufactures or acquires for the performance of this contract, together with any corresponding design drawings, shall remain the property of Seller, notwithstanding any tooling charges therefore. Tooling charges shall apply only to custom Tooling made solely for Buyer's specific requirements ("Custom Tooling") and shall not apply to Seller's proprietary Tooling. Tooling charges convey to Buyer the right to have the Custom Tooling used by Seller for the performance of this contract, but they do not convey title, right of possession or right of removal or include cost of engineering or design. Seller shall be responsible for routine maintenance and repair of all Tooling. Major overhauls, replacements or changes to Custom Tooling shall be charged to Buyer. Custom Tooling that is inactive for a period of 3 years may, at the option of Seller, be scrapped by Seller. Any resulting scrap value of the Custom Tooling shall belong to Seller as payment for storage and maintenance cost.

**16. PART NUMBERS:** Buyer furnished part numbers are for Buyer reference only. Seller references manufacturer's part numbers only on all quotes, confirmations, purchase orders, invoices, shipping documents and any other documents. Seller makes no effort to verify, cross reference or confirm accuracy or authenticity of Buyer furnished part numbers.

**17. SAMPLES:** Upon Buyer's request, Seller shall supply preproduction samples for dimensional approval and Seller shall have the right to charge for the cost of material and manufacture necessary to produce such samples, unless such samples are made from completely new Tooling and Buyer has placed an order for a sufficient number of corresponding production parts, in which case the samples shall be provided without charge.

**18. SECURITY INTEREST:** Title to the goods sold hereunder, and all additions or accessions to and substitutions for such equipment, shall remain in the Seller as a security interest, and Buyer hereby

grants to Seller a security interest in the goods sold hereunder, until the Buyer has completed payment of the purchase price, plus accrued interest, and fully performed all of the other terms and conditions hereof, at which time the Seller's security interest is satisfied.

**19. ADDITIONAL DOCUMENTS; POWER OF ATTORNEY:** At the request of Seller, Buyer will join with Seller in executing one or more Financing Statements, pursuant to the Uniform Commercial Code in form satisfactory to Seller and will pay the cost of filing the same in public offices whenever filing is deemed by Seller to be necessary or desirable. If Buyer fails to promptly execute and file such Financing Statements, then Buyer appoints any officer, employee, or agent of Seller as Buyer's attorney-in-fact for purposes of signing and filing said Financing Statements, and hereby authorizes such officer, employee, or agent to execute and file such Financial Statements in the name of Buyer.

**20. SEVERABILITY:** If any provisions of these terms and conditions of sale shall be deemed illegal or unenforceable, such illegal or unenforceability shall not affect the validity and enforceability of any legal and enforceable provision hereof, which shall be construed as if such illegal and unenforceable provision(s) had not been inserted herein.