

STANDARD TERMS AND CONDITIONS OF SALE FOR GOODS AND SERVICES FROM THETA ELECTRONICS (PTY) LTD

1. Validity of quotations

Quotations from Theta Electronics are valid for 30 days, unless otherwise agreed in writing.

2. Acceptance of orders

2.1 An order placed by the Customer shall become binding on the Customer when placed by the Customer on Theta Electronics. Such an order shall become binding on Theta Electronics only after Theta Electronics's written confirmation of the order, or upon delivery of the ordered goods by Theta Electronics to the Customer.

2.2 All samples taken for approval basis by the Customer will be deemed as accepted by the Customer and fit for production, unless returned by the Customer within 14 days of delivery of the samples.

2.3 All orders shall be made in writing and will be binding and subject to these Terms and Conditions, and may not be cancelled unless negotiated accordingly. In the event of any order being given to Theta Electronics on an order form reflecting the Customer's name as the entity from which the order emanates, such order shall be deemed to have been placed by the Customer, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Customer, and such order will be deemed to constitute a valid order placed by the Customer.

3. Technical Documents and Technical Information

3.1 All drawings and other technical documents regarding the goods or their manufacture submitted by one party to the other party, prior or subsequent to the sale of the goods, shall remain the property of the submitting party.

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- 3.2 Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than for which they were submitted. They may not without the consent of the other party be copied, reproduced, transmitted or otherwise communicated to a third party. Theta Electronics are however entitled to submit documents to any subcontractor of Theta Electronics.
- 3.3 All artwork, photographic negatives, printing plates, silk screen etc. produced by Theta Electronics, for the manufacture of the goods or any sample thereof, will belong to Theta Electronics.
- 3.4 Theta Electronics shall be entitled to make an additional charge if any modification to drawings, data, information, artwork or other materials provided by the Customer becomes necessary in order to bring them up to Theta Electronics's standards. Theta Electronics shall in such event also be entitled to postpone the date for delivery of the goods for such period of time as Theta Electronics may require.
- 3.5 If the Customer at any time desires Theta Electronics to make any modification to or replacement of drawings, data, information, artwork or any material provided by the Customer, such modification or replacement shall be authorized by the Customer in writing and must be accepted in writing by Theta Electronics to be effective. Theta Electronics shall be entitled to make an additional charge for such modification or replacement and shall also be entitled to postpone the date for delivery of the goods for such period of time as Theta Electronics may require.

4. Delivery, risk transfer and ownership

- 4.1 Terms of delivery will be agreed in writing between Theta Electronics and the Customer. Where a trade term has been agreed, it shall be construed in accordance with the INCOTERMS in force at the time of formation of the contract. If no trade term is agreed, the delivery shall be Ex Works (EXW).

- 4.2 The risk of damage to or destruction of goods passes to the Customer upon delivery of the goods. The goods shall remain the property of Theta Electronics until paid for in full.
- 4.3 If Theta Electronics finds that Theta Electronics will not be able to deliver goods in accordance with the agreed delivery time, or if delay on Theta Electronics's part seems likely, Theta Electronics shall without undue delay notify the Customer thereof in writing, stating the reason for the delay and if possible the time when delivery can be expected.
- 4.4 If delivery is delayed due to force majeure or due to any actions or circumstances attributable to the Customer, the time of delivery shall be extended by a period which is reasonable with regard to the circumstances. In no event shall Theta Electronics be liable for delay or failure to deliver due to force majeure or circumstances attributable to the Customer.
- 4.5 The Customer hereby confirms that the goods and services on the invoice issued duly represent the goods and services ordered by the Customer at the prices agreed by the Customer and, where performance/delivery has already taken place, that the services and goods were inspected and conform to the quality and quantity ordered. It is the sole responsibility of the Customer to determine that the goods or services ordered by the Customer are suitable for the purposes the Customer intends using them. Any delivery note (copy or original) duly signed by the Customer and held by Theta Electronics shall be prima facie proof that the delivery was made to the Customer.
- 4.6 The Customer agrees to indemnify Theta Electronics against any claims that may arise against Theta Electronics resulting from the use of a third party for the transportation of the goods.
- 4.7 The Customer shall take delivery of the goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity ordered provided that:-
- 4.7.1 Such discrepancy in quantity shall not exceed 5%; and

4.7.2 The payment of the purchase price shall be adjusted pro rata to the discrepancy.

4.8 When specifications, data, information, drawings, plans, tools, artworks, materials or other items are supplied by the Customer for the processing of goods, Theta Electronics shall not be responsible for any defect in the goods attributable to the Customer.

5. Prices and rate of exchange adjustment

5.1 The price of the product is in accordance with the price notified in Theta Electronics's written offer to the Customer.

5.2 The applied currency to the sale of the goods is the currency notified in the written offer or otherwise notified by Theta Electronics in writing.

5.3 The parties agree that the price of any goods and services ordered by the Customer is based on the forward exchange contract (FEC) rate between the South African Rand (ZAR) and the quoted currency, predominantly being the United States Dollar (USD), at the date when the order was accepted and confirmed by Theta Electronics.

5.4 If the exchange rate changes after conclusion of the contract/acceptance of the quote, Theta Electronics reserves the right upon purchasing the FEC to alter the indication rate (FCIR) shown on the quote to reflect the changed market conditions.

5.5 Unless specifically agreed in writing to the contrary any expense or cost charged by Theta Electronics for tools, will cover part of the cost for tools only and such tools will belong to Theta Electronics and will be stored at Theta Electronics's expense for 6 months from the date of the contract for the sale of the goods for possible use against further contracts, but Theta Electronics gives no guarantee concerning the useful life of any tools beyond the period of the original contract.

6. Terms of payment

- 6.1 The Customer agrees to pay the amount on all invoices at Theta Electronics's premises as per the terms agreed upon, provided that such amount represents the agreed price of goods ordered by the Customer.
- 6.2 The Customer has no right to withhold payment for any reason whatsoever.
- 6.3 The Customer is not entitled to set off any amount due to Theta Electronics against this debt.
- 6.4 The Customer agrees that if an amount is not settled in full on due date, Theta Electronics is entitled to:
- 6.4.1 immediately institute action against the Customer at the sole expense of the Customer; or
 - 6.4.2 cancel the agreement and take possession of any goods delivered to the Customer and claim damages;
- in any event without prejudice to any other rights and remedies that Theta Electronics may have in law.
- 6.5 In the case of late payment, interest shall be calculated at 2% per annum above the prime rate of interest as charged from time to time by commercial banks of South Africa, from the date payment falls due to date of payment in full.
- 6.6 In the event of cancellation, the Customer shall be liable to pay:
- 6.6.1 A pro-rata production proportion of cost;
 - 6.6.2 In the event of the goods having left the country or place of origin, the full amount of the order is applicable;

- 6.6.3 In the event of the goods being ready and not having left the country or place of origin, then the invoice value to the Customer less transport costs are applicable. The goods will be scrapped in the country or place of origin and a certificate of proof will be provided upon request;
- 6.6.4 The timeframe for cancellations are subject to eleven weeks for sea-freight and five weeks for airfreight;
- 6.6.5 Cancellations will be subject to a handling fee of not less than 10% of initial order.
- 6.7 The amount of the Customer's indebtedness to Theta Electronics at any time shall be determined and proved by a certificate signed by any director of Theta Electronics. This certificate shall be binding on the Customer, and may be used as *prima facie* proof of the amount of the Customer's indebtedness to Theta Electronics, and shall be valid as a liquid document for the purpose of obtaining provisional sentence or a default or summary judgment against the Customer in any competent Court.

7. Reservation of ownership

- 7.1 Ownership of any goods sold by Theta Electronics to the Customer shall, notwithstanding the delivery of those goods or the passing of any risk in the goods, remain vested in Theta Electronics until the goods have been paid for in full.
- 7.2 The Customer hereby authorises Theta Electronics, or its authorised representative or agent, to enter upon the Customer's premises and to remove the goods if they have not been paid for in full.
- 7.3 The Customer hereby indemnifies and holds Theta Electronics harmless for any reasonable costs incurred by Theta Electronics in removing the goods and transporting them from the Customer's premises to Theta Electronics's premises.

8. Product Quality and Liabilities for Defects

- 8.1 The Customer shall upon delivery inspect the delivered goods. Complaints and remarks must be received by Theta Electronics in written form, within fourteen (14) days from delivery.
- 8.2 In the absence of any Complaints or remarks as aforesaid, the Customer shall be deemed to have accepted the delivered goods in good order and free from any defects.
- 8.3 Complaints due to errors or lack of information in production files/documentation or design defects in the construction cannot be accepted.

9. Disclaimer of warranties; guarantees

- 9.1 All terms, conditions and warranties (whether implied or made expressly) whether in law or made by Theta Electronics, its servants or agents or otherwise relating to the quality and/or fitness for purpose of any of the goods are excluded to the extent permitted by applicable law. Where a term, condition or warranty cannot be excluded, that term, condition or warranty will be interpreted as restrictively as is permitted by applicable law.
- 9.2 In the event of defective goods, the rights of the Customer are limited to the factory guarantee of the goods supplied. To be valid, guarantee claims must be supported by the original tax invoice and the undamaged packaging of the goods as well as the actual goods. All guarantees are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than the Customer. Under no circumstances will Theta Electronics be liable for damage arising from misuse or abuse of the goods;
- 9.3 It is the responsibility of the Customer to return any defective goods to the premises of Theta Electronics at the Customer's own expense, unless accepted in writing by Theta Electronics.

9.4 Theta Electronics reserves the right to make destructive analysis of assembled boards returned for investigation.

10. Compensation

10.1 If a complaint is valid and Theta Electronics accepts responsibility for the complaint, Theta Electronics reserves the right to, in reasonable time, provide the Customer with new goods of the same type, revision and in the same quantity as the defect goods, or if possible, repair the defective goods. Theta Electronics's liability in case of defects is limited to the repair or replacement of the defective goods.

10.2 Compensation for assembled components, re-programming machines or other cost for rework or repair are not accepted for more than an amount twice the contract value of the defective board price, unless otherwise agreed in writing. Theta Electronics reserves the right to investigate complaints in its own quality laboratories and will not accept costs for external investigations, unless otherwise agreed in writing.

11. Protection of personal information

11.1 If Theta Electronics receives or is required to process any information about or belonging to an identifiable individual ("**Personal Information**") while supplying any goods in terms of this agreement, it shall:

11.1.1 comply with the requirements of the Protection of Personal Information Act 4 of 2013 (POPI), and any other applicable laws relating to the processing of Personal Information, whether in South Africa or in any other jurisdiction;

11.1.2 not process any such Personal Information for any purpose other than to perform its obligations under this agreement, or unless it has the Customer's prior written consent to do so; and

11.1.3 ensure that it adopts adequate security safeguards that meet generally accepted industry standards for the protection, control and use of Personal Information.

12. Breach

12.1 If a party (“**defaulting party**”):

- 12.1.1 fails to pay any amount due in terms of this agreement;
- 12.1.2 breaches any other term of this agreement and fails to remedy that breach within a period of 30 (thirty) days after receiving written notice from the other party to remedy that breach;
- 12.1.3 commits any act of insolvency as defined in the Insolvency Act, 1936; or
- 12.1.4 is wound up, whether compulsorily or voluntarily; or
- 12.1.5 is the subject of any business rescue process, or otherwise has its business or affairs placed under the supervision of an independent third party appointed in terms of any law; or
- 12.1.6 enter into any arrangement or compromise with any of its creditors to pay any of its debts; or
- 12.1.7 has a final judgment taken against it and that judgment remains unsatisfied for a period of 30 (thirty) days or more after it comes to the notice of the defaulting party. (A “**final judgment**” means a judgment that cannot be appealed, reviewed or rescinded);
- 12.1.8 stops, or threatens to stop, trading, or its status as a going concern is materially threatened;

then the other party (“**aggrieved party**”) may elect, by written notice, to cancel this agreement or claim specific performance by the defaulting party of all its obligations, even if the date for performance has not yet arrived, or the defaulting party’s immediate compliance with the terms and conditions of this agreement.

- 12.2 Even if the aggrieved party does not elect to cancel this agreement or claim specific performance or immediate compliance by the defaulting party, it will still have the right to claim damages from the defaulting party or seek any other relief it may have in law.

12.3 The defaulting party will pay all expenses, costs, and charges incurred by the aggrieved party in successfully enforcing or defending any provision of this agreement, including legal costs calculated on the attorney and client scale, collection commission, and any VAT charged. Any amount due to the aggrieved party in terms of this clause will be paid by the defaulting party immediately on written demand.

13. Limitation of liability

13.1 The Customer agrees that neither Theta Electronics nor any of its employees, directors, agents or representatives will be liable for:

13.1.1 any loss claimed or suffered by the Customer or any other party that was not reasonably foreseeable at the time when this agreement was signed; and

13.1.2 any indirect or special damages, or consequential loss, including but not limited to loss of profits, loss of revenue, loss of goodwill, loss of business opportunities, loss of any expected savings,

regardless of whether such damages or loss arose from a claim in contract, delict, or any other cause of action.

13.2 Theta Electronics's liability for direct damages shall under no circumstances exceed such part of the price to the Customer of the goods or services supplied by Theta Electronics to which such damages relate.

14. Force Majeure

14.1 Either party shall be entitled to suspend performance of its obligations under a contract to the extent that such performance is materially impeded or made unreasonably onerous by circumstances beyond the control of the parties such as (but not limited to) fire, war, industrial disputes, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance (collectively referred to as “**Force Majeure**”).

14.2 A circumstance beyond the control of the parties, whether occurring prior to or after the formation of the contract, shall give a right to suspension only if its effect on the performance of the contract could not reasonably have been foreseen at the time of the formation of the contract.

14.3 If a Force Majeure event does not cease for a consecutive period of 90 (ninety) days, either party may terminate this agreement by written notice to the other without incurring any liability.

15. Applicable law and jurisdiction

15.1 These Terms and Conditions shall be governed by the laws of South Africa.

15.2 If legal proceedings are to be instituted for any reason arising from this Terms and Conditions, each party hereby consents and submits to the jurisdiction of the Magistrates Court having jurisdiction over its person and regardless of whether the amount or value of any claim exceeds the jurisdiction of that Court.

15.3 Notwithstanding clause 15.2, Theta Electronics may, at its sole discretion, elect to institute legal proceedings in connection with this agreement in any division of the High Court of South Africa.

16. Sub-contracting and cession and assignment

- 16.1 Theta Electronics may at its discretion sub-contract the whole or any part of the manufacturing process of the goods but this shall not relieve it of its obligations under the contract for the sale of the goods. Theta Electronics may at its discretion license, sub-contract or assign all or any part of their rights or obligations under these Terms and Conditions.
- 16.2 The parties shall not cede, delegate, assign, transfer, or encumber any of their rights, obligations and/or interest in, under or in terms of this agreement to any third party without the prior written consent of the other party. Any cession, delegation, assignment, transfer, or encumbrance created without such consent will be invalid and void.

17. General

- 17.1 Theta Electronics (Pty) Ltd (“Theta Electronics”) reserves the right to amend these Terms and Conditions of Sales and Delivery (the “Terms and Conditions”) at any time. Customers are responsible for checking the Terms and Conditions regularly to ensure that they have the latest valid version. Orders shall be subject to the Terms and Conditions applicable at the time of placing the order. The Terms and Conditions are published on Theta Electronics’s web site at www.theta-electronics.co.za.
- 17.2 Each clause of these Terms and Conditions is severable, the one from the other, and if any one or more clauses are found to be invalid or unenforceable, that clause/those clauses shall not affect the balance of these Terms and Conditions, which shall remain of full force and effect.
- 17.3 The Customer hereby acknowledges that he/she/it has read and understood these Terms and Conditions and accepts them as binding.
- 17.4 The Customer acknowledges that no representations were made by Theta Electronics in regard to the goods or services or any of their qualities leading up to the Customer purchasing any goods or services from Theta Electronics.

- 17.5 Any condonation of any breach of any of the provisions hereof, or any other act of relaxation, indulgence or grace on the part of Theta Electronics, shall not in any way operate as, or be deemed to be a waiver by Theta Electronics, of any rights under these Terms and Conditions, or be construed as a novation thereof.
- 17.6 This Contract contains the entire agreement between the parties and any other terms thereof, whether express or implied, are excluded herefrom, and any variations, cancellations or additions to these Terms and Conditions shall not be of any force or effect unless reduced to writing and signed by the parties, or their duly authorised signatories.

18. Execution

- 18.1 By entering into this agreement, the parties each warrant in favour of the other that:
- 18.1.1 it is a properly constituted entity in accordance with the company laws of the Republic of South Africa;
- 18.1.2 it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under this agreement and all the documents which are to be executed by it as envisaged by this agreement;
- 18.1.3 it has not been induced by the other to enter into this Agreement by any prior representations whether oral or in writing, except as specifically contained in this agreement and the parties hereby waive any claim for breach of any such representations which are not so specifically mentioned (other than fraudulent misrepresentations) in this agreement; and
- 18.1.4 the person executing this agreement on their behalf has been properly authorised to do so.