

## **SANYO CORPORATION OF AMERICA TERMS AND CONDITIONS OF SALE**

### **1. Acceptance and Modification**

This document constitutes an offer or counteroffer (an "Offer") by SANYO CORPORATION OF AMERICA ("Seller") to sell the products and/or services described herein (the "Products") to Buyer ("Buyer"), subject to and in accordance with these terms and conditions and attachments to this document (the "Terms and Conditions"). This document is not an acceptance of any offer or counteroffer made or purchase order submitted by Buyer, and this Offer and any contract arising out of this Offer (collectively, the "Agreement") are each expressly conditioned upon Buyer's assent to all the Terms and Conditions. Seller's acceptance of any order is subject to Buyer's assent to all the Terms and Conditions set forth in Seller's acknowledgement, and Buyer's assent to these Terms and Conditions shall be presumed from Buyer's receipt of Seller's acknowledgement, or from Buyer's acceptance of all or any part of the Products ordered. Buyer acknowledges agreement with these Terms and Conditions by placement of an order to purchase Products from Seller or its acceptance of all or any part of the Products called for in a purchase order. If a purchase order or other correspondence contains terms or conditions contrary to the terms and conditions contained in Seller's acknowledgement, Seller's acceptance of any order shall not be construed as assent to any additional terms and conditions, nor will that constitute a waiver by Seller of any of the Terms and Conditions nor an acceptance of any such additional provisions. The Agreement constitutes the entire understanding between the parties with respect to the subject matter of the Agreement and supersedes any prior discussions, negotiations, agreements and understandings. Modifications to the Agreement can be made only by a writing signed by an authorized representative of each party.

### **2. Termination**

**2.1** Neither the Agreement nor any related order may be cancelled or altered by Buyer except upon terms and conditions acceptable to Seller, as evidenced in writing by Seller's authorized representative. In the event of such a cancellation by Buyer, Buyer shall pay to Seller: (a) the agreed-on unit price for each completed Product, (b) the costs of materials and work-in-process inventory incurred by Seller; (c) all other costs incurred by Seller arising out of, or related to, performance and cancellation of the Agreement or any related order; and (d) 15% of the sum of (a) and (b) as a restocking fee. Until Seller has received all the foregoing cancellation charges, all cancelled Products shall remain the sole and exclusive property of Seller, regardless of the state of completion of such Products. All rights, obligations, and duties under this Agreement, which by their nature or by their express terms extend beyond the expiration or termination of the Agreement, including but not limited to, Seller's limited warranties, Seller's limited liabilities, Buyer's security agreement, and Buyer's indemnification obligation shall survive the expiration or termination of the Agreement.

**2.2** If Buyer breaches any term or condition of this Agreement and fails to cure the breach within fourteen (14) days from the date of written notice from Seller (within seven (7) days if Buyer breaches its payment obligation under this Agreement when due), if Buyer becomes insolvent (as defined under UCC § 1-201(b)(23)), makes an assignment for the benefit of its creditors, or is adjudicated bankrupt or become subject to the appointment of a receiver to all or part of its business, or disposes substantially all assets of its operation, or ceases to do business or to exist, Seller may immediately terminate this Agreement or any part hereof and Seller may, among other remedies provided in the Agreement or under the applicable laws, withhold a shipment or any performance owed to Buyer and setoff Seller's claim against Seller's obligation to Buyer. Buyer will remain liable for all unpaid amounts and actual cost of material/work in progress and direct labor expended by Seller in reasonable anticipation of its fulfillment of the Agreement.

### **3. Price, Delivery Terms and Payment Terms**

Unless otherwise quoted, the price of each Product shall be the price effective at the time of shipment and the delivery terms are FOB shipping point. Unless otherwise quoted, Buyer shall solely bear the risk of loss of the Products from the shipping point. Buyer acknowledges and agrees that price of each Products is not fixed until the time of shipment, subject to change by Seller for a reason of increase of costs of raw material, labor, service fee, manufacturing cost, warehouse costs, shipment costs, import duties or fees, or excise tax, or currency exchange loss. Unless otherwise quoted, the payment terms are net 30 days from delivery. Buyer's late payment shall be subject to monthly service charge of 1.5% per month. Unless otherwise quoted by Seller, all payments shall be made in U.S. dollars. Unless otherwise specified on the quote, price quoted by Seller does not include sales tax, value added tax, import duties or fees, excise tax, or any other charges imposed by any governmental authority based on or measured by the transaction between Seller and Buyer (other than income taxes imposed on Seller). Buyer acknowledges that its payment owed to Seller under this Agreement is not subject to any setoff or recoupment by Buyer unless and until Seller agrees in writing to such setoff or recoupment, and that Buyer shall not exercise its right to setoff or recoupment in connection with any disputed, contingent, or unliquidated claim.

### **4. Warranty**

**4.1** Seller warrants that the Products meet the specifications provided by Seller.

**4.2** SELLER MAKES NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NO-INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS PROVIDED IN THIS SECTION OR ANY WARRANTY PROVIDED BY THE MANUFACTURE OF THE PRODUCTS. THE FOREGOING

WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES.

**4.3** Buyer assumes all risk and liability resulting from the use of the Products, whether used with or without other product, service or license not provided by Seller.

**4.4** Unless otherwise agreed by Seller, any action for breach of warranty shall be commenced within one (1) year after delivery of the Products, regardless of the date the breach is discovered. Buyer waives any longer statute of limitations to the extent permitted by applicable law.

## **5. Force Majeure**

Seller shall not be liable for any delay or failure in performance under the Agreement, in whole or in part, caused by circumstances beyond its reasonable control, including but not limited to acts of God, war, terrorism, civil unrest, embargoes, punitive/retaliatory tariffs, governmental actions, pandemics, epidemics, strikes, labor disputes (including those involving Seller's own employees), fire, flood, severe weather, breakdown or unavailability of equipment or facility, shortage or unavailability of materials, energy, or transportation, or a substantial increase of the cost or unavailability of materials or components necessary for Seller's performance.

In the event of such delay or failure, the time for performance shall be extended for a period equal to the duration of the delay, or Seller may, at its option and without liability, cancel all or part of the affected order by written notice to Buyer. Seller shall notify Buyer within a reasonable time of the occurrence of a force majeure event. If the event continues for more than 30 days, either party may terminate the affected portion of the Agreement without liability, except for payment obligations for goods already delivered.

Under no circumstances shall Seller be obligated to procure goods from other sources or incur additional costs or expenses to overcome a force majeure event.

## **6. Security Agreement and Insurance**

**6.1** To secure Buyer's payment of the price payable under the Agreement and performance of all of Buyer's obligations under the Agreement, Buyer hereby: (a) grants to Seller a purchase money security interest in all Products; and (b) authorizes Seller to file such financing statements and other documents, and agrees to execute such other documents and to do such other acts, as Seller may reasonably deem necessary or advisable to protect its rights in such Products. In the event Buyer breaches the terms or conditions of the Agreement, including, but not limited to, any past due balances, together with interest, costs, and attorney fees are permitted herein, Seller shall have all the rights and remedies of a secured creditor under the Uniform Commercial Code. Seller is

hereby granted power of attorney on behalf of Buyer to execute all appropriate documents (including financing statements) to perfect and record such security interest.

**6.2** Until Seller has received full payment of the price payable under the Agreement, Buyer shall maintain insurance covering all Products in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, naming SANYO CORPORATION OF AMERICA and its parent and affiliates as insured or coinsured, and shall, upon Seller's request, furnish evidence of such insurance satisfactory to Seller. Seller has no obligations to carry such insurance coverage, to make such endorsement, or to take such other actions as requested by Buyer.

## **7. Limitation of Remedies and Limitation of Liability**

**7.1** Seller shall be given a reasonable and prompt opportunity to examine any claim of defect by Buyer. Failure to give written notice of claim within five (5) days from date of delivery, or the date fixed for delivery (in the case of non-delivery), shall constitute a waiver by Buyer of all claims in respect of such Products. Products shall not be returned to Seller without Seller's prior permission, and then only in the manner prescribed by Seller.

**7.2** Buyer agrees that its sole and exclusive remedy against Seller shall be limited to either replacement of the Products or a refund of the purchase price at Seller's option.

**7.3** THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF THE AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PRODUCTS AT ISSUE IN THE CLAIM ACTUALLY RECEIVED BY SELLER.

**7.4** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES AND PROFITS AND/OR MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD-PARTY CLAIMS.

**7.5** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, SELLER SHALL NOT BE RESPONSIBLE FOR, AND SHALL INCUR NO LIABILITY WITH RESPECT TO, ANY INFORMATION SUPPLIED BY BUYER OR ITS AFFILIATE OR THEIR CONTRACTOR, EMPLOYEE OR AGENT AND ANY SPECIFICATION, DESIGN OR ENGINEERING DRAWINGS, REGARDLESS OF WHETHER OR NOT SUCH SPECIFICATION, DESIGN OR

ENGINEERING DRAWINGS ARE REVIEWED BY SELLER OR USED BY SELLER FOR PROPOSAL TO BUYER.

## **8. Information and Tangible Property**

**8.1** Buyer shall not disclose, use, or permit any third party to access, any confidential or proprietary information of Seller or its parent or affiliate, including but not limited to technical data, pricing, trade secrets, product specifications, and business operations, except as strictly necessary to perform its obligations under this Agreement and subject to reasonable safeguards. Buyer shall also protect and not disclose any personal data owned, possessed, or controlled by Seller, and shall comply with all applicable data protection laws in connection with such data. These obligations shall survive the termination or expiration of this Agreement.

**8.2** Any property of Buyer placed in Seller's custody for performance of the Agreement is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any event beyond Seller's control.

**8.3** Buyer shall not disclose, and shall not make available to Seller, its parent, affiliate or subcontractor, their employee or agent, any confidential or proprietary information or personal data owned, possessed, managed or controlled by Buyer, including but not limited to trade secrets, business plans, technical data, personal data, and any other information protected under a confidential/non-disclosure agreement with any third party or protected by trade secret law or data privacy laws. Seller shall have no obligation, duty, or liability with respect to such information, and Buyer shall be solely responsible for safeguarding such information from unauthorized disclosure or access.

**8.4** Buyer shall have no right to access Seller's facilities, systems, or premises, nor any right to inspect or obtain the Seller's internal documents, including but not limited to cost data, financial statements, pricing formulas, production records, or other proprietary or business information, except as may be expressly agreed to in writing by Seller. Any such access, if granted, shall be subject to Seller's sole discretion and may be conditioned upon execution of a separate confidentiality agreement.

## **9. Changes; Engineering Reviews**

Buyer may request in writing changes in the design, drawings, specifications and shipping instructions of Products. As promptly as practicable after receipt of such request, Seller shall advise Buyer in an amendment letter what amendments to the Agreement, if any, may be necessitated by such changes, including, without limitation, amendment of price, specifications and shipment schedule. If such proposed amendments to the Agreement are accepted in writing by Buyer, Seller shall make the requested changes with respect to such Products as may be affected thereby. Seller may at any time make such changes in design and

construction of Products as shall constitute an improvement in the judgment of Seller. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers. Any such changes in or substitutes of materials or components that were specifically identified in the specifications or Seller's quotation require notice to and the consent of Buyer, which consent shall not be unreasonably withheld or delayed and shall be presumed unless Buyer objects within ten (10) days of notice of the change or substitution. After any engineering review conducted while the Agreement is in force and prior to its completion for purposes other than making changes referred to above, Seller may assume that its recommendations are accepted in the event that Buyer does not provide required decisions or objects within fifteen (15) days after submission of Seller's recommendations to Buyer.

#### **10. Compliance with Law**

Buyer shall comply with all applicable federal, state, and local laws, regulations, and ordinances in connection with its purchase, transportation, storage, handling, use, process, application, maintenance, repair, modification, resale, and export of the Products. Notwithstanding the foregoing, Seller is not obligated to comply with any law, regulation, policy or requirement that Buyer unilaterally demands the Seller to follow, unless such compliance is expressly required by applicable law or agreed to in writing by Seller.

#### **11. Indemnification**

Buyer shall indemnify, defend, and hold harmless the Seller and its parent, affiliates and their officers, directors, employees, and agents from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to Buyer's or its employee's, agent's or contractor's transportation, storage, handling, use, process, application, maintenance, repair, modification, resale, and export of the Products or Buyer's compliance with law provided in this Agreement, including without limitation any claim for personal injury, property damage, or violation of law.

#### **12. Miscellaneous**

**12.1** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and the parties shall substitute therefor an enforceable provision that achieves the same business purpose as the provision that is prohibited or unenforceable.

**12.2** The Agreement shall be governed by and construed according to the laws of the State of New York without reference to principles of conflicts of laws. The

rights and obligations of the parties under this Agreement shall not be governed by the 1980 U.N. Convention of Contracts for the International Sale of Goods.

**12.3** Seller and Buyer hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York, located in the City and County of New York and the United States District Court for the Southern District of New York, in any action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in any such court and further waives any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

**12.4** Seller's failure to exercise a right or remedy or Seller's acceptance of a partial or delinquent payment shall not be deemed to be a waiver of any of Seller's rights or Buyer's obligations under this Agreement and shall not constitute a waiver of Seller's right to declare an immediate or a subsequent default.

**12.5** No assignment of this Agreement or of any right or obligation under this Agreement shall be made by Buyer without the prior written consent of Seller. In the event of a proper assignment, the Agreement shall be binding upon and inure to the benefit of Buyer's successors and assigns.

**12.6** In the event of Seller's enforcement of any term or condition in the Agreement, Buyer shall be liable to Seller for all costs, including attorneys' fees, incurred by Seller in enforcing the Agreement and in collecting any sums owed by Buyer to Seller.

**12.7** In its relationship with Seller, Buyer is an independent contractor. Nothing in this Agreement shall be construed such that Buyer shall be considered an employee, agent or partner of Seller. This Agreement shall not confer any rights or remedies upon any third-party, other than the parties to this Agreement and their respective successors and permitted assigns.

**12.8** In the event of any conflict or inconsistency between this Agreement and the terms and conditions provided in Seller's documents, such conflict or inconsistency shall be resolved by giving precedence to the provision in the following order of priority:

- 1: Order Acknowledgment/Confirmation
- 2: Quote
- 3: This Agreement
- 4: Any other document of Seller