

# Terms and Conditions of Sale

ITW Electronic Business Asia Co., Ltd.

## **1. Acceptance**

ITW Electronic Business Asia Co., Ltd. is herein referred to as "ITW" and the customer purchasing products ("Products") or services ("Services") is herein referred to as "Purchaser." These terms and conditions of sale ("Terms"), any ITW quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein ("ITW Documents" and together with these Terms, the "Agreement"), constitute the complete terms governing the sale of Products and Services.

**ITW HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR IN PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT.**

No site usage agreement or any other click through agreement on a website will have any binding effect whether or not ITW clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by ITW or Purchaser's acceptance of delivery of the Products or Services will manifest Purchaser's assent to the Agreement. Additional or different terms applicable to a particular sale may be specified in the body of an ITW Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized officer of ITW; (b) ITW Document terms; (c) these Terms.

## **2. Quotations**

Quotations are only valid in writing and for [30 days] from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser's credit. ITW may refuse orders and has no obligation to supply Products or Services unless ITW issues an order acknowledgement or upon the shipment of Products or commencement of Services.

## **3. Prices and Payment Terms**

Prices are in [U.S. Dollars] and are subject to change without notice. All orders are accepted subject to ITW's price in effect at time of shipment. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges ("Fees") related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If ITW is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify ITW therefor. Terms of payment are [30 days] net from the date of ITW's invoice. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser's inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify ITW for all associated costs incurred by ITW, including reasonable attorney fees and court costs.

## **4. Quantities**

Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Purchaser's order and the stated price per item will continue to apply. If a Purchaser's purchase order does not specify quantities, or specifies the quantities as "blanket order", "as released", "as scheduled", "as directed", "subject to Purchaser's production releases" or another similar reference, or if a Purchaser's purchase order purports to be a "Requirements Contract" (or something similar) but ITW has not expressly agreed in writing to such requirements obligations, ITW is not obligated to ship any Products beyond the quantity contained in any firm release that has been accepted by ITW, and ITW is not obligated to accept any future orders, releases or offers.

*[Unless otherwise agreed in writing, any Purchase Order that purports to be a "Requirements Contract" and has been agreed to in writing by Seller shall be deemed an exclusive contract between Seller and Purchaser, limited to a maximum duration of five years.]*

## **5. Credit Approval**

All shipments are subject to approval by ITW's credit department. ITW may invoice Purchaser and recover for each shipment as a separate transaction. If, in ITW's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then ITW may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.

## **6. Cancellation or Modification**

ITW may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of ITW's Products or Services upon reasonable prior written notice to Purchaser. Once ITW has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with ITW's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.

## **7. Inspection / Non-Conforming Shipments**

Purchaser may inspect Products for a period of [15 business days] after delivery ("Inspection Period"). Purchaser must notify ITW in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford ITW a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide ITW such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. Purchaser may not return any Product without ITW's prior written authorization. Any return authorized by ITW must be made in accordance with ITW's return policies. Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless ITW agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser's order, and the stated price per item will continue to apply.

## **8. Delivery**

ITW anticipates use of common carriers for shipment of Products. The carrier, and not ITW, will bill for freight rates and other shipping charges. Payments for such charges shall be paid by Purchaser directly to the carrier. All Products will be shipped [ExWorks ITW's facility (Incoterms 2020)]. Shipping dates are approximate and are based upon prompt receipt of all necessary information from Purchaser. ITW may ship items in a single or multiple shipments. Title to the Products and risk of loss shall pass to Purchaser upon delivery in accordance with the applicable shipping term. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery. Purchaser must notify ITW and the delivering carrier within [15 business days] from date of receipt of Products, of any damage or shortage, and afford ITW a reasonable opportunity to inspect the Products. Any loss occasioned by damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier.

## **9. Limited Warranty**

**9-1. Warranty Period and Coverage.** ITW warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under ITW. ITW further warrants that all Products shall be free from defects in material and workmanship under normal use for a period of **one (1) year** from the date of shipment (the "Warranty Period"), and will conform to mutually agreed upon written specifications or other descriptions.

**9-2. Claims Procedure.** To make a claim, Purchaser must: (i) provide written notice of the defect to ITW within the Warranty Period; (ii) allow ITW a reasonable opportunity to investigate the claim; (iii) obtain a written Return Material Authorization ("RMA") from ITW before returning any goods; and (iv) return the Product to ITW, freight prepaid, only after receiving such approval.

**9-3. Remedy Selection.** At ITW's sole discretion, ITW will repair the Product, replace the Product, or refund the original purchase price. This represents Purchaser's sole and exclusive remedy.

**9-4. Exclusions and Limitations.** This warranty does not cover defects or damage resulting from: (i) misuse, abuse, or neglect; (ii) unauthorized alterations, services, or repairs performed by third parties; (iii) failure to follow maintenance instructions or environmental specifications; (iv) normal wear and tear; (v) improper installation; or (vi) improper testing.

The Warranty against defects does not apply to: (1) consumable components or ordinary wear items; or (2) use of the Products with equipment, components or parts not specified or supplied by ITW or contemplated under the Product documentation.

**9-5. Disclaimer of Fitness and Suitability.** All of ITW's physical properties, statements, and recommendations are based on tests or experience believed to be reliable, but they are not guaranteed. ITW makes no guarantee that any Product is fit for a specific purpose or application. It is Purchaser's sole responsibility to determine the suitability of the Product for Purchaser's intended use.

**EXCEPT AS SET FORTH HEREIN, ITW MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

## **10. Service Warranty**

ITW warrants that (a) it will perform Services in a timely, competent and professional manner and in accordance with industry standards; and (b) the Services shall conform to any mutually agreed upon specifications or statements of work. Purchaser's sole remedy, and ITW's sole liability, for a breach of the foregoing warranty is for ITW, at its option, to re-perform the Services or credit Purchaser's account for such Services.

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

**ITW WILL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST ITW, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON ITW'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT SHALL ITW'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF ITW'S PRODUCTS OR SERVICES EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.**

## **12. Product Use**

Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of ITW's Products, ITW is not responsible for the results or consequences of use, misuse or application of its Products. All physical properties, statements and recommendations are either based on the tests or experience that ITW believes to be reliable, but they are not guaranteed.

## **13. Tooling/Molds/Dies**

All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of ITW. Any material, tooling or equipment furnished to ITW by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.

**14. Consignment**

*[If Products are sold on a consignment basis, title in such Products will not pass to Purchaser until the earlier of: (a) the time the Product is removed from inventory for use; or (b) the date that is 90 days from the Product's shipment date. ITW will have a purchase money security interest in consigned Products and may file a financing statement in accordance with the Uniform Commercial Code. Purchaser agrees to store consigned Products in a segregated area and will install and/or maintain any signs or other devices to clearly identify the Products as ITW Products. Purchaser assumes the risk of loss of all consigned Products. Purchaser shall insure consigned Products at Purchaser's expense in amounts at least equal to the replacement value.]*

**15. Ownership of Intellectual Property**

All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by ITW and all rights therein (collectively, "Intellectual Property") will remain the property of ITW and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to ITW upon request from ITW. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use ITW's Products or receive the Services purchased from ITW.

**16. Use of Trademarks and Trade Names**

Purchaser shall not use, directly or indirectly, in whole or in part, ITW's name, or any other trademark or trade name that is now or may hereafter be owned by ITW (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by ITW in writing. Purchaser hereby acknowledges ITW's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by ITW. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof, or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Should Purchaser cease being an authorized customer of ITW for any reason, Purchaser shall immediately discontinue any formerly permitted use of ITW's name or the Trademarks.

**17. Confidential Information**

All information furnished or made available by ITW to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without ITW's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by ITW; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to ITW with respect to such information.

**18. Audit**

Unless agreed to in writing by an officer of ITW, neither Purchaser nor any Purchaser representative, may examine or audit ITW's cost accounts, books or records of any kind or any matter, or any other data that ITW, in its sole discretion, considers confidential or proprietary.

## **19. Infringement and Indemnification**

Except as set forth below, ITW agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of ITW's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies ITW written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with ITW in the defense and settlement of such Claim; and (c) Purchaser allows ITW the right to defend and settle such Claim at ITW's expense. Notwithstanding the foregoing, ITW shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product, (2) the combination of any part or Product with any other part or product not supplied by ITW, or (3) any part or Product or process that is designed or specified by Purchaser.

## **20. ITW Employees**

ITW sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on ITW or such ITW employees.

## **21. Service Terms**

The following terms and conditions apply to any on-site Services provided by ITW:

- Services will be provided at ITW's then current service rates.
- Purchaser shall prepare the site for the Services. If the site is not prepared upon ITW service personnel's arrival at the agreed time and date, ITW may charge Purchaser for any delay and/or travel time at ITW's regular service rates.
- Purchaser shall provide ITW with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses applicable to Purchaser's local jurisdiction.
- ITW may refuse, without any liability, to provide Services and to allow ITW service personnel to suspend Services or vacate any site where, in ITW's opinion, performance would pose a risk to the safety of any person.
- Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except to the extent damages or injuries are directly caused by the gross negligence or willful misconduct of ITW service personnel.
- Purchaser must provide at least 24 hours' notice of cancellation of any Service order. If Purchaser cancels with less than 24 hours' notice, Purchaser is responsible for any costs incurred by ITW.

## **22. Compliance**

Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including import/export laws, labor laws and anti-corruption laws.

## **23. Relationship of the Parties**

Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

## **24. Force Majeure**

ITW will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, actions by any governmental agency or authority (whether valid or invalid), blockades, labor disputes, raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable ITW to perform.

#### **25. Assignment: Binding Effect**

No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without ITW's prior written consent. Any attempted assignment will be void. ITW may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.

#### **26. Waiver**

In the event of any default by Purchaser, ITW may decline to ship Products or provide Services. If ITW elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, ITW's actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect ITW's legal remedies.

**Bankruptcy.** If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.

#### **27. Limitation of Actions / Choice of Law**

Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the state of Illinois and litigated exclusively in a state or federal court located in [Cook County, Illinois]. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. In any action concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their reasonable and documented attorneys' fees incurred, provided if each party prevails in part, such fees will be allocated in the manner as the court determines to be equitable in view of the relative merits and amounts of the parties' claims.

#### **28. Survival**

Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

#### **29. Severability**

If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

#### **30. Integration and Modification**

The Agreement constitutes the entire agreement between ITW and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.