

**SUMITOMO ELECTRIC DEVICE INNOVATIONS U.S.A., INC.**  
**TERMS AND CONDITIONS OF SALE**

**1. ACCEPTANCE:** Unless and until a formal confirmation in writing (the “Confirmation”) is issued by a person authorized by Seller, no order for the products specified in the Confirmation (collectively, the “Products”) will become effective as a valid contract binding upon Seller. SELLER’S CONFIRMATION IS EXPRESSLY CONDITIONED ON BUYER’S ASSENT TO ALL OF THE TERMS AND CONDITIONS IN THESE TERMS AND CONDITIONS OF SALE. Any provisions or conditions of Buyer’s order which is in any way materially inconsistent with, or represent a material addition to, these Terms and Conditions of Sale (except additional provisions specifying quantity and shipping or billing instructions) shall not be applicable hereto or binding upon Seller. First time purchasers may be required to provide credit information and/or be subject to a credit history check and approval before Seller issues the Confirmation. As used herein, the term “writing” includes an electronic record as defined in Section 1633.2(g) of the California Uniform Electronic Transactions Act, and the term “written” includes a corresponding meaning.

**2. PRICE:** Seller reserves the right to change or withdraw prices for the Products it offers for sale without prior notice provided such price(s) were not accepted, subject to validity conditions set forth in quotations. All prices are in U.S. dollars unless otherwise specified. Notwithstanding any price quotation previously provided to Buyer, Seller shall not accept Buyer’s order if the prices of the Products ordered therein are less than \$500.00 in the aggregate.

**3. TAXES:** All prices are exclusive of all sales, use and other taxes or charges. The amount of any present or future sales or use taxes or other charges imposed on or measured by the sale and purchase of the Products between Buyer and Seller shall be added to the prices quoted or invoiced and shall be paid by Buyer, except those taxes or charges specifically itemized and included in the total price as set forth on the Confirmation; or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the authorities imposing the same.

**4. PAYMENT:** Unless otherwise specified herein or otherwise approved by Seller in writing, Buyer shall make full payment of the purchase price not later than the thirtieth day after Seller’s delivery of the Products. If delivery of the Products is delayed due to any reason attributable to Buyer, payments for the Products are to be made as though delivery had been made as specified on the Confirmation. Overdue payments will carry 18% per annum interest charges (not to exceed the maximum rate allowed by law under the circumstances). Buyer shall pay all of Seller’s costs of collection under these Terms and Conditions of Sale, including attorneys’ fees, whether or not litigation is commenced and whether in trial courts, appellate courts, bankruptcy courts, arbitration or mediation.

If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuance of production or shipment of the Products on the terms as originally specified in the Confirmation, Seller may, upon ten (10) days notice to Buyer, require full or partial payment in advance, regardless of the payment terms originally specified in the Confirmation. Without limiting the generality of the foregoing, Seller reserves the right to ship its order and make collection by sight draft, with the Bill of Lading attached (D/P at sight). In the event of bankruptcy or insolvency of Buyer, Seller may cancel any order then outstanding and receive reimbursement for its cancellation charges. Each shipment shall be considered a separate and independent transaction and payment therefor made accordingly.

Notwithstanding the foregoing, if shipment or manufacture of the Products is delayed due to any

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reason attributable to Buyer, Buyer shall pay to Seller Seller's usual storage charges for such Products. Payment by Buyer for storage charges and such Products shall become due on the date when Seller is prepared to make shipment of the Products, or the date on which Seller commences suspension of the manufacturing process, whichever occurs earlier; provided that in this situation Buyer is only required to make the above described payment for part of the purchase price in proportion to the manufacturing process completed at that time. Notwithstanding Section 9 below, risk of loss, but not title, to such Products shall pass to Buyer as of the date when Seller receives Buyer's postponement request.

**5. LIMITED WARRANTY: SELLER WARRANTS THE PRODUCTS IT MANUFACTURES TO BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND TO CONFORM TO ITS PRODUCT SPECIFICATION. SELLER'S LIABILITY UNDER THIS WARRANTY SHALL TERMINATE IN ONE YEAR AFTER THE TENDER OF DELIVERY OF THE PRODUCTS TO BUYER (THE "WARRANTY PERIOD"). ANY REFERENCE IN A CONFIRMATION TO A WARRANTY IS FOR INFORMATION PURPOSES AND IS SUPERSEDED BY THE WITHIN TERMS.**

**SELLER'S LIABILITY UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT AT SELLER'S OPTION, OF DEFECTIVE PRODUCTS AT EXW (AS DEFINED IN SECTION 9) POINT OF SHIPMENT; PROVIDED THAT NOTICE OF ANY DEFECT IS GIVEN BY BUYER TO SELLER IN WRITING WITHIN 30 DAYS FROM THE DATE WHEN BUYER KNEW OR SHOULD HAVE KNOWN SUCH DEFECT DURING THE WARRANTY PERIOD AND THAT UPON BUYER'S RETURN OF THE DEFECTIVE PRODUCTS TO SELLER, OR, IF DESIGNATED BY SELLER, TO THE LOCATION WHERE THE PRODUCTS ARE MADE, PROPERLY PACKED AND WITH TRANSPORTATION CHARGES PREPAID BY BUYER, WHEREBY AN INSPECTION THEREOF REVEALS TO SELLER'S SATISFACTION THAT BUYER'S CLAIM IS VALID UNDER THE TERMS OF THIS WARRANTY. IF SELLER FAILS TO REPAIR OR REPLACE (OR PERFORM SERVICES AGAIN) AS AFORESAID TO REMEDY A VALID WARRANTY CLAIM, SELLER'S ENTIRE LIABILITY TO BUYER SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE OR TOTAL CONSIDERATION, IF ANY, RECEIVED BY SELLER FOR THE PRODUCTS CONTAINING SUCH DEFECTS.**

**SELLER'S WARRANTY SET FORTH IN SECTION 5 SHALL NOT APPLY TO DEFECTS OR NON CONFORMANCE CAUSED BY AND RESULTING FROM (I) IMPROPER APPLICATION, OPERATION, MISUSE, UNAUTHORIZED REPAIR, MAINTENANCE OR STORAGE OF THE PRODUCTS, (II) THE BUYER'S INSTRUCTION, USE OF SOFTWARE, TECHNICAL INFORMATION OR MATERIALS ADDED TO THE PRODUCTS OBTAINED FROM SELLER WHICH IS NOT DISCLOSED TO THE SELLER AT TIME OF PURCHASE.**

**THIS WARRANTY CONSTITUTES SELLER'S SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON CONFORMING PRODUCTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY (INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE).**

**6. LIMITATION OF LIABILITY: BUYER AGREES THAT ALL CLAIMS AGAINST SELLER, OTHER THAN FOR BREACH OF WARRANTY (WHICH ARE RESTRICTED UNDER SECTION 5 ABOVE), ARISING UNDER THESE TERMS AND CONDITIONS OF SALE OR ANY LAW OF THE JURISDICTION WHEREIN THE PRODUCTS ARE USED, SHALL EXPIRE AND BE BARRED FOREVER UNLESS BUYER NOTIFIES SELLER OF SUCH CLAIM IN WRITING WITHIN ONE YEAR OF THE DATE WHEN THE PRODUCTS WERE DELIVERED TO BUYER. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER OR ANY PERSON CLAIMING THEREUNDER, OR ON BEHALF OF BUYER OR THIRD PARTY, FOR ANY CLAIMS WHATSOEVER, EXCEED THE AMOUNT PAID BY BUYER TO SELLER, IRRESPECTIVE WHETHER SUCH CLAIMS ARE FOR PROPERTY DAMAGE, PERSONAL**

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**INJURY OR DEATH, EXCEPT WHERE EXCLUSIONS OF SUCH PERSONAL INJURY OR DEATH CLAIMS ARE UNCONSCIONABLE AT LAW IN THE JURISDICTION WHERE SUCH CLAIMS AROSE, WHETHER ARISING OUT OF OR RELATING TO A CONFIRMATION OF BUYER'S ORDER OR THE TRANSACTIONS BETWEEN BUYER AND SELLER COVERED HEREUNDER, AND SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY BUYER TO SELLER THEREUNDER.**

**EXCEPT AS HEREIN PROVIDED, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ACTUAL DAMAGES IN EXCESS OF THE CONSIDERATION PAID SELLER FOR THE PRODUCTS, OR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED AND WHETHER ADVISED TO SELLER IN ADVANCE OF THE TRANSACTION OR WHETHER CAUSED BY SELLER'S NEGLIGENCE (INCLUDING LATE DELIVERY OR LATE PERFORMANCE).**

**7. INSPECTION:** Seller shall allow Buyer and regulatory authorities right of access to observe Seller's applicable areas of Seller's facilities at all reasonable times during normal business hours; provided that Buyer shall provide well in advance prior written notice to Seller requesting such inspection with reasonable details of reasons therefore; and, provided, further, that while at Seller's facility for that purpose Buyer are prohibited from visiting any areas other than those identified by Seller and that Buyer shall comply with Seller's policies and regulations applicable to such visit.

**8. PACKING AND SHIPPING:** Prices are quoted exclusive of shipping charges. Unless otherwise specified, the Products shall be shipped in standard commercial packaging. When special or export packaging is required or requested, the cost of such packaging will be separately invoiced to Buyer. Unless otherwise stated, the EXW point is Seller's facility.

**9. RESPONSIBILITY AND TITLE:** Unless otherwise specified herein, Buyer assumes all responsibility for and risk of loss of, or damage to, the Products (including replacement thereof) at the EXW point (as defined in Incoterms 2010 published by the International Chamber of Commerce) as specified in the Confirmation, notwithstanding the fact that Seller may have selected the carrier.

Unless otherwise specified herein, title to and right of possession of the Products shall pass to Buyer when Buyer assumes the responsibility of the risk of loss of the Products as set forth herein; provided, however, that Seller retains a security interest and right of possession in the Products until Buyer makes payment in full. These Terms and Conditions of Sale constitute a security agreement between Buyer, as a debtor, and Seller, as a secured party, under the Uniform Commercial Code, and Seller shall have the rights and remedies of a secured party thereunder. Buyer hereby authorizes Seller, or its assignee, where permitted by applicable state law, to sign and file financing statements and to do any other act or thing necessary or useful in perfecting Seller's security interest in the Products, and agrees to execute any and all documents required to be executed on its part to perfect said security interest.

**10. RETURN POLICY:** The Products may not be returned for any reason unless authorized in advance in writing by Seller and they may be returned only in accordance with the terms and conditions set forth herein, which may include restocking charges. The restocking charges of standard products are 30% of the amount specified in the Confirmation of the Products to be returned. Nonstandard or customer specific products may not be returned except for permitted under the warranty provisions herein. Seller may refuse the Products returned to Seller without Seller's written authorization. Risk of loss for the Products returned without authorization shall not pass to Seller.

**11. CONTINGENCIES (FORCE MAJEURE):** Seller shall not be liable for any failure to deliver the Products or otherwise perform hereunder due to any cause beyond its control, including, without limitation, labor difficulties, casualties and accidents, acts of the elements,

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acts of the public enemy, transportation difficulties, governmental regulations. In addition, sales and shipments of the Products to Buyer are subject to Seller's ability to obtain equipment, materials or qualified labor and Seller may apply or prorate shipment of its products to or among its customers as in its sole judgment as reasonable under the circumstances. Seller shall give Buyer notice of delays, non-delivery or allocation pertinent to Buyer's order.

**12. CANCELLATION/PUSHOUT:** Buyer may not cancel or modify any order, in whole or in part, without the express written consent of Seller.

**13. EXPORT CONTROL:** Buyer acknowledges that the Products, technical data or software and technology incorporated in or supplied with the Products are subject to the U.S. Export Administration Regulations (EAR) administered by the U.S. Department of Commerce or the export control laws and regulations of the Defense Directorate of Trade Controls of the U.S. State Department and the foreign trade regulations of the U.S. Treasury Department applicable to export sales transactions and deliveries to persons and entities in specified countries, and that as such a validated U.S. Export License, or exemption or exclusion therefrom, may be required before the Products can be exported from the U.S.A. or the applicable countries. Buyer shall not export, re-export, transfer or otherwise dispose of the Products, technical data, technology or software except in accordance with the laws of the U.S. and the applicable jurisdiction where the foregoing may be received by Buyer.

**14. SPECIFICATIONS:** To the extent that the Products' performance or utility is not materially and adversely affected and that it does not affect the delivery schedule, Seller may modify the Products or their specifications or substitute a product of another design for a Product and to change the prices accordingly. If Buyer requests any change in the Products' specifications, Seller may approve or reject such request in writing; provided that Buyer acknowledges and agrees that such change may result in price increase and/or extension of performance time.

**15. PATENT INDEMNITY:** Seller does not warrant in any way that the Products are free from infringement or violation of any patent, copyright, trade secret, trademark or other property right, and if any claim by a third party against Buyer asserts that Products infringe upon any patent, copyright, trade secret, trademark or other property right, Buyer shall at its own expenses defend any such suit and/or settle the same. Buyer shall immediately notify Seller in writing of the commencement of any such claim, and upon Buyer's request Seller shall assist and cooperate with Buyer in such defense and settlement, provided, however, that in any event Buyer shall assume any damages, losses, expenses and costs arising from such infringement or violation. If any such claim is brought against Buyer or Seller or if in Seller's opinion the Products are likely to become a subject of such claim, Seller shall be entitled at its sole opinion (i) to remove said Products and refund the purchase price thereof to Buyer, less a reasonable charge for depreciations, and/or (ii) to discontinue further supply of the Products in spite of any provisions hereof and without any breach hereof. The foregoing shall be the entire liability of Seller in respect of infringement of any patent, copyright, trade secret, trademark or other property right of third party and is in lieu of all warranties, express or implied, in regard thereto, and in no event shall Seller or supplier or manufacturer of the Products be liable for any damages, including, but not limited to, loss of anticipated profits or other economic loss.

Notwithstanding anything herein to the contrary, Seller assumes no liability whatsoever if any infringement claim arises out of compliance with Buyer's design or specifications or out of any addition to or modification of the Products, or any combination thereof with other products by or under the instruction of Buyer, any customer or third party without Seller's express authorization thereof, or from use of the Products in the practice of process or system specified by Buyer or any customer, and Buyer shall indemnify and hold Seller and the supplier and manufacturer of the Products harmless from and against all claims, losses, liabilities or obligations arising as a result of such infringement or alleged infringement.

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- 16. SALE CONVEYS NO LICENSE:** Seller reserves all right, title and interest in any intellectual property rights contained or embodied in the Products, or resulting from the services, including any custom developments created or provided by Seller under these Terms and Conditions of Sale. Nothing in these Terms and Conditions of Sale will be deemed to grant to Buyer any ownership or licensing rights in such intellectual property.
- 17. ASSIGNMENT:** Buyer shall not assign any interest, rights or obligations under these Terms and Conditions of Sale without prior written consent of Seller.
- 18. GOVERNING LAW AND DISPUTE RESOLUTION:** These Terms and Conditions of Sale shall be construed in accordance with the laws of the State of California, without regard to its conflict of law principles. The provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods are expressly disclaimed and excluded from application to these Terms and Conditions and any dispute arising hereunder or in connection therewith. All disputes, controversies, or differences which may arise between the parties, out of or in relation to these Terms and Conditions of Sale or the breach thereof, shall be exclusively and finally settled by arbitration held in San Jose, California, U.S.A. Arbitration shall be proceeded by one or more arbitrators under the Commercial Arbitration Rules of the American Arbitration Association. The language to be used in the arbitral proceedings shall be English. The award of the arbitrators shall be final binding upon the parties.
- 19. EQUAL OPPORTUNITY:** Seller is committed to provision outlined in the Equal Opportunity Clause of Executive Order 11246, (41 CFR 60-1.4), section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), section 402 of Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-250.5(a)), and, the Jobs for Veterans Act of 2003, (41 CFR 60-300.5(a)) as well as any other regulations pertaining to these orders.
- 20. ENTIRE AGREEMENT:** These Terms and Conditions of Sale, including the Confirmation which incorporates these Terms and Conditions of Sale by reference and any other terms incorporated herein by reference, constitute the entire agreement between Seller and Buyer with respect to the subject matter hereof and supersede all prior understandings or agreement, whether written or oral, with respect to that subject matter. No amendment to these Terms and Conditions of Sale shall bind Seller unless it is in writing and signed by an authorized Seller representative.
- 21. NONWAIVER OF DEFAULT:** No act, or failure to act, of Seller subsequent to Buyer's default under these Terms and Conditions of Sale shall be construed, interpreted, implied, or assumed to be a waiver of such default. Seller may, at its sole option, elect to continue shipments or stop shipments, treat the order as terminated in whole or in part, or accelerate delivery of the balance of shipment under the order. No claim or right arising out of a breach of these Terms and Conditions of Sale by Buyer can be discharged in whole or in part unless specifically identified in writing and signed by Seller.
- 22. HEADINGS:** The headings contained in these Terms and Conditions of Sale are for convenience of reference only and are not intended to have any substantive significance in interpreting these Terms and Conditions of Sale.
- 23. BINDING AGREEMENT:** Buyer acknowledges that it is entering into a binding agreement governed by these Terms and Conditions of Sale.
- 24. UPDATES:** Seller reserves the right to update these Terms and Conditions of Sale at any time, effective upon posting an updated version at [http://www.sei-device.com/about/SEDU\\_TermsandConditions.pdf](http://www.sei-device.com/about/SEDU_TermsandConditions.pdf). However, the terms and conditions in effect at the time of purchase shall apply to that purchase of products or services.