

TERMS AND CONDITIONS OF OFFERS TO SELL

1. OFFERS TO SELL. Subject to the provisions hereof, all offers to sell submitted are firm for thirty (30) days from the date of the offer unless indicated differently on the face of the offer. Alterations or changes of offers to sell after thirty (30) days may be made at AMERICAN SHIZUKI CORPORATION (hereinafter called "ASC") discretion without notice. Price offers apply only if the quantity ordered hereunder is released within twelve (12) months and shipments scheduled no more than fifteen (15) months from date ASC receives BUYER order, unless indicated differently on the face of the offer to sell.

2. ORDERS. All orders are subject to acceptance and acknowledgement in writing by ASC. In the event that ASC accepts any orders submitted by a BUYER, the terms and conditions herein will be the sole terms and conditions of the Contract between the parties. Orders submitted on BUYER purchase order forms and thereafter accepted by ASC will not bind ASC to any printed terms and conditions contained in any BUYER purchase order form, regardless of whether ASC notifies BUYER of any objections to any terms and conditions contained in any BUYER purchase order. By placing an order pursuant to an ASC offer to sell or by acceptance of delivery of any of the items described in such an offer, BUYER shall be deemed to have accepted the terms and conditions contained herein and to have waived the terms and conditions of its order form, unless modified separately in writing by BUYER and agreed to separately in writing by ASC.

This instrument shall become a binding contract when signed by both BUYER and ASC. In the absence of BUYER signature, BUYER shall be bound by all the terms and conditions hereof whenever the first of the following events shall occur: (a) Ten (10) days after Buyer receives this form, unless BUYER gives ASC written notice of any objections thereto within such period; (b) When BUYER or anyone acting on his behalf issues any instructions to ASC under this agreement; or (c) When BUYER or anyone acting on his behalf accepts delivery of goods or merchandise covered by the Contract. For purposes of this paragraph, BUYER is deemed to have received this form within five (5) days after it has been deposited in United States mail, first class postage pre-paid, by ASC, or on the date ASC usually delivers this form to BUYER, whichever comes first.

3. PRICES AND RELEASES. Prices apply only if the quantity ordered hereunder is released within (12) months and shipments scheduled no more than fifteen (15) months from the date ASC received BUYER order. Otherwise, ASC standard prices in effect on the date of receipt by BUYER of the quantity actually shipped shall apply and BUYER shall pay the difference in price, if any.

4. TERMS AND METHOD OF PAYMENT. (a) Unless specified otherwise, on the face of the offer to sell, order acknowledgement, or customer invoice, the terms of payment for the items delivered hereunder (hereinafter called "the items") are **NET THIRTY (30) DAYS FROM DATE OF INVOICE** if ASC has extended credit to BUYER. ASC may at any time either hold, grant, or suspend credit at its discretion. If credit has not been established or has been withheld or suspended, the terms shall be cash with order, C.O.D. or otherwise at the election of ASC. Each shipment will be considered a separate and independent transaction and payment shall be made accordingly. Payment shall be made for the items without regard to whether BUYER has made or will make any inspection of the items. (b) Prices quoted on an offer to sell and acknowledged do not include freight, federal, state, or local taxes, duties or other levies as applicable, which taxes, duties, or other levies will be added to the sales price when ASC is legally obligated to collect them unless BUYER provides ASC with the proper exemption certificate. All prices offered and acknowledged are subject to correction for stenographic, typographic and clerical errors.

If BUYER fails to take delivery hereunder of the quantity of items upon which a quantity discount price, if any, is based, BUYER will be back billed an amount based upon the quantity actually delivered hereunder and the quantity discount schedule in effect at the time the order was placed. Such charges shall be in addition to any cancellation charges.

5. CANCELLATION. All orders scheduled for delivery will not be subject to change, reschedule, or cancellation without sixty (60) days prior written notification from BUYER.

Upon cancellation of an order for nonstandard electronic/electrical components, and items manufactured in whole or in part to BUYER specifications, BUYER shall be liable for one hundred percent (100%) of the cost for work-in-process material and finished goods during the one hundred twenty (120) day period prior to the scheduled date for shipment shown on ASC sales order acknowledgement. Where prototype approval is normally required the BUYER shall be liable for work order as follows:

6. CHANGES TO SPECIFICATIONS. ASC reserves the right to change the specification of any item (including all statements and data appearing in ASC catalogs, data sheets and advertisements) without notice. If changes to specifications are made, ASC assumes no obligation to provide the change on items previously purchased or to continue to supply discontinued items. ASC may modify the specifications of items to be delivered hereunder, if designated by ASC and may substitute items manufactured to such modified specifications for those specified herein provided such items substantially conform to this Contract. BUYER, by written order, may request changes in drawings and specifications, however, no change shall be made in drawings and specifications relating to this Contract without the prior written consent of ASC.

7. TITLE AND DELIVERY. (a) The items shall be delivered F.O.B. point of shipment, and title thereto shall pass to BUYER upon ASC delivery of the items to a common carrier for shipment to BUYER. In the event the offer calls for delivery by installments, this Contract shall be construed as severable as to each installment. Each such installment shall be deemed to be sold under a separate and independent contract and default in any shipment or delivery shall not invalidate this Contract in respect of any other shipments or deliveries. Delay in delivery of any installment shall not relieve BUYER of its obligation to accept remaining deliveries. (b) Shipping dates represent ASC best estimate and are approximate. ASC shall not be liable for any loss or expense incurred by BUYER or others in the event that ASC fails to meet the specified delivery schedule due to production or other delays, or for any loss or expense due to ASC selection of the carrier. Delays or changes in schedule due to BUYER directed actions are subject to price adjustments. In the absence of instructions by BUYER prior to delivery, ASC will select the carrier to whom delivery will be made for shipment to BUYER. (c) ASC reserves the right to allocate shipments among its various customers under any circumstances. (d) BUYER will be deemed to have waived any and all claims for item shortages unless written notice of such claims is given to ASC within ten (10) days after receipt of shipment.

Default or delay by ASC in shipping or delivering the whole or any part or installment of this Contract shall not affect any other portion thereof nor shall it affect any other contract between the BUYER and ASC. Any delivery or shipment of the whole or any part or installment made within (15) business days before or after the date(s) specified therefor shall constitute timely delivery or shipment. If ASC fails to ship or deliver thereafter the whole or any part of installment, the BUYER shall have the right to cancel the Contract only with regard to such undelivered goods and merchandise.

8. EXCUSABLE DELAYS. (a) ASC shall not be responsible or liable for losses or damages arising from any failure of ASC to perform or delays in ASC performance due in whole or in part to causes beyond its reasonable control. Such causes shall include, but are not limited to, acts of God; fire; explosion; acts of the public enemy; war; rebellion; sabotage; labor disputes (regardless of the reasonableness of demands of labor); shortages of labor, fuel, power, or materials; failure or delays in transportation; equipment or machinery breakdowns; failure of ASC usual sources of supplies; acts, orders, or priorities (whether compliance is mandatory or voluntary) of any government or any state or political subdivision or agency thereof; judicial action, or delays of ASC suppliers. (b) The applicable delivery schedules shall be extended for a period commensurate with the excusable delays, if any such delay shall continue for more than thirty (30) days, the quantities undelivered during such period of delay may be cancelled at ASC election without liability to ASC by written notice to BUYER at the time during the period of this Contract. In the event ASC production is curtailed as a result of excusable delays, ASC reserves the right to allocate production deliveries among its various customers then under Contract for similar goods. Reduced or delayed deliveries hereunder as a result of such allocation shall not be a breach of contract. This method of allocation will be at ASC discretion and, if such allocation is made, BUYER will be reasonably notified of the estimated quantities to be delivered hereunder.

9. INSPECTION AND ACCEPTANCE. Upon arrival of the items at the point of destination, Buyer shall immediately inspect the items at its expense and, if the items are found not to conform to this Contract, shall give written notice to ASC within ten (10) days of any claim to that effect, specifically setting forth the manner in which the items do not conform. Rejected items may be returned to ASC for replacement upon receiving authorization and shipping instructions from the authorized personnel of ASC. If BUYER retains the items after their arrival without giving ASC such notice as required, such failure shall constitute an irrevocable acceptance of the items by BUYER. BUYER inspection and/or acceptance tests shall not exceed the inspection and/or test procedures specified by this Contract or to the extent not so specified, those customary in the industry for the items furnished hereunder and shall be at BUYER expense. ASC reserves the right to charge to BUYER any cost resulting from BUYER testing, handling, and disposition of any items returned by BUYER which are found by ASC to conform to this Contract.

10. PATENTS. (a) BUYER shall indemnify, defend, and hold ASC harmless against any damages, expenses, costs, reasonable attorney's fees, or losses resulting from any legal action or claim made against ASC, either severally or jointly with BUYER, or any suit or proceeding based thereon, for infringement (either direct or contributory) of patents, trademarks, or for unfair competition based upon or arising from (1) compliance with BUYER designs, specifications, or instructions, (2) the use of any item or any part thereof, furnished hereunder in combination with goods not supplied by ASC; or (3) in connection with a manufacturing or other process utilizing any item, or part thereof, furnished hereunder. (b) With respect to items manufactured solely to ASC designs or specifications, ASC shall defend any suit or proceeding brought against BUYER insofar as it is based on a claim that

any such items or any parts thereof manufactured and furnished hereunder by ASC to BUYER alone and not in combination with any other goods, whether or not supplied by ASC, constitute direct infringement of any duly issued United States patent. If notified promptly of such claim in writing and given complete authority, information, and assistance (at ASC expense) for the defense of same, ASC shall pay all damages and costs not to exceed the aggregate sum paid to ASC by BUYER for infringing item. (c) ASC shall not be obligated to defend or be liable for any damages, expenses, costs, attorney's fees, or losses, if the infringement arises out of compliance with BUYER specifications or from a combination, or an addition to, or a modification of the items, or any part thereof, by BUYER after delivery by ASC or from use of the items or any part thereof, in the practice of a process or from the use of any item or part thereof in combination with goods not supplied by ASC. (d) If items manufactured solely to ASC designs or specifications and furnished directly by ASC to BUYER hereunder are held by a court of competent jurisdiction to constitute an infringement of a duly issued United States patent and the use of such items is enjoined, ASC shall, in its sole discretion and at its own expense, either (1) procure from BUYER the right to continue using such infringing items; (2) replace such infringing items with non-infringing items; (3) modify such infringing items so they become non-infringing; or (4) remove such infringing items and refund the purchase price and the transportation cost thereof. In no event shall ASC total liability to BUYER under or as a result of compliance with the provisions of this paragraph exceed the aggregate sum paid to ASC by BUYER for the infringing items. (e) Sale of items or any parts thereof hereunder confers on BUYER no license, express or implied, under any patent rights of ASC covering or relating to (1) apparatus or circuits in which the items or parts thereof may be used; (2) a process or machine in connection with which the items or parts thereof may be used; (3) the process for their manufacture; or (4) a combination in which the items or parts thereof may be used. (f) The foregoing states the sole and exclusive liability of the parties hereto for the patent infringement and is in lieu of all warranties, expressed, implied, or statutory, with respect thereto.

11. WARRANTY. (a) Standard and custom items; ASC warrants that standard and custom items delivered hereunder will be free from defects in material and workmanship and will conform to the electrical data specifications listed on ASC data sheet or catalogues for such items (as identified by ASC part number appearing on the face hereof) or other specifications separately approved in writing by ASC under normal use and service for a period of ninety (90) days after delivery of the items to BUYER. (b) Developmental items; Developmental, experimental, or prototype items delivered hereunder are warranted to be free from defects in materials and workmanship and to meet the applicable preliminary specification only at the time of receipt by BUYER and for no longer period of time. (c) Nonstandard items; ASC makes no warranty or guarantee whatsoever with respect to sales or orders for nonstandard or sub-grade items. Items sold under such sales or orders are furnished "as is". (d) **THE FOREGOING WARRANTY AND REMEDY ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

12. REMEDIES AND DAMAGES. (a) If the items furnished by ASC fail to conform to this Contract, including, but not limited to ASC warranty, ASC sole and exclusive liability shall be at ASC option to repair, replace or credit BUYER account for any such items which are returned by BUYER during the applicable warranty period set forth above, provided that: (1) ASC has received written notice within ten (10) days after discovery of any defect by BUYER; (2) the defective items are returned to ASC upon ASC authorization, transportation charges collect by BUYER; and (3) ASC examination of such items discloses to ASC satisfaction that defects in such items have not been caused by improper handling, testing, installation, misuse, neglect, repair, alteration, or damage by rain, fire, or other casualty or by accident. The aforementioned provisions do not extend the original warranty period of any article which has been repaired or replaced by ASC. (b) Liability of ASC to BUYER, if any, under this Contract for breach of contract or warranty, negligence, or otherwise, shall in no event exceed the total contract price specified herein less the purchase price of any items delivered and accepted hereunder, in no event shall ASC be liable to BUYER or others for special collateral incidental, consequential damages, or punitive damages of any kind or for any reason from any cause arising under this Contract, including without limitation, provisions regarding warranties, guarantees, indemnities, and patent infringement or based upon claims, demands, settlements, or lawsuits arising from or in connection with, the terms sold hereunder, such damages including, but not limited to, costs of removal and reinstallation of items, loss of goodwill, loss of profits or loss of use. BUYER shall be deemed to assume all liability for any and all damages arising from, or in connection with, the use, or misuse of the items by BUYER, its employees, or others. (c) The remedies provided ASC in this Contract shall be cumulative and in addition to any other remedies provided by law or equity, a waiver or a breach of any provision hereof shall not constitute a waiver of any other provision.

13. TOOLING. Unless otherwise agreed to in writing, ASC shall retain rights to and possession of any tooling, drawings, tapes, fixtures, and original documentation used in furnishing items hereunder.

14. PROPRIETARY DATA. BUYER agrees not to use or disclose drawings, specifications, technical information, pricing, or other data furnished by ASC and identified by ASC as proprietary data without the written consent of ASC. Nothing in this clause, however, shall restrict BUYER right to use or disclose drawings, specifications, technical information, pricing, or other data which are or become generally known to the public, or are rightfully obtained from other sources, or are purchased from ASC by BUYER for unlimited use or disclosure.

15. U.S. GOVERNMENT CONTRACT. If the goods to be furnished under this Contract are to be used in the performance of a U.S. Government contract or subcontract, those clauses of the applicable U.S. Government procurement regulations which are mandatorily required by federal statute to be included in U.S. Government contract or subcontracts shall be incorporated herein by reference. All other terms of U.S. Government procurement regulations shall not apply where inconsistent with ASC terms and conditions.

16. EQUAL EMPLOYMENT OPPORTUNITY. ASC complies with the Equal Employment Opportunity clauses of Executive Order 11246, including all amendments thereto, relative to Equal Employment Opportunity and the implementing rules and regulations of the Department of Labor on Equal Employment Opportunity all of which are incorporated herein by specific reference and upon request to BUYER, will so certify.

17. WAIVER. The failure of either party to enforce at any time any of the provisions of this Contract or any right with respect thereto, or to exercise any option herein provided, will not in any way be construed to be a waiver of such provisions, rights or options, or in any way to affect the validity of this Contract. The exercise by either party of any of its rights or any of its options hereunder under terms or covenants herein shall not preclude or prejudice either party from thereafter exercising the same or any other right it may have under this Contract, irrespective of any previous action or proceeding taken by either party.

18. EXPORT CONTROL. BUYER agrees to comply with all laws and regulations relating to export control and to obtain all necessary government approvals and licenses prior to exporting any product purchased pursuant to this Contract. Further, BUYER agrees to indemnify ASC against any and all liability costs and damages in any way related to BUYER'S failure to comply with this Section 20.0.

19. APPLICABLE LAW. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado, venue for legal proceedings shall be in the State of Colorado, and all obligations are deemed made and performable in the State of Colorado. BUYER shall comply with all applicable foreign, federal, state and local laws and regulations.

20. ANY ACTION OF ANY KIND AGAINST ASC BY BUYER MUST BE COMMENCED WITHIN ONE (1) YEAR FROM DATE SUCH RIGHT, CLAIM, DEMAND, OR CLAUSE OF ACTION SHALL FIRST ACCRUE.

21. GENERAL. (a) This Contract (including all attachments and documents incorporated or referenced herein) constitutes the complete and exclusive statement of all the terms and conditions of the Contract between ASC and BUYER and supersedes all prior representations, agreements, or communications, either verbal or written, between the parties hereto with respect to the subject matter hereof. No modification, amendment, rescission, waiver or other change to this Contract shall be binding on ASC, nor may any claim or right arising out of breach of this Contract be discharged, in whole or in part by waiver or renunciation of the claim or right unless made in writing and signed by a duly authorized representative of ASC. No field representative of ASC has authority to sign such a writing. In the event of any default by BUYER, ASC may decline to perform further under this Contract without in any way affecting its right hereunder. If despite any default by BUYER, ASC elects to continue to perform, such election shall not constitute a waiver of any default by BUYER or in any way affect ASC legal remedies for any such default. (b) BUYER shall not assign, delegate, or subcontract any of its obligations hereunder to any third party without the express written consent of ASC. No consent shall be deemed to relieve BUYER of its obligation to comply fully with the requirements thereof. BUYER affirms that there exist no third party beneficiaries to BUYER rights hereunder unless BUYER specifically identified such beneficiary on the face of the BUYER order or BUYER acceptance of ASC offer to sell. (c) In the event of the appointment of a trustee, receiver or liquidator for all or a portion of BUYER property, or any act of bankruptcy by BUYER as defined in the Federal Bankruptcy Act, as amended, or any voluntary petition in bankruptcy by BUYER, ASC may terminate this Contract without further obligation or liability to BUYER. (d) In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein. (e) Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) typed provisions on the face of this Contract; (2) Contract attachments; (3) the printed portion of this Contract, including these Terms and Conditions of Offers to Sell; (4) the statement of work, if any; and (5) specifications attached or incorporated by reference.

ASC reserves the right to make process and/or product improvements as long as the full intent of the product specifications are met. Components made under military approval will be in accordance with the appropriate military document.