



# TELEDYNE WIRELESS, LLC dba *TELEDYNE MEC (TMEC)*

## Terms and Conditions of Sale (Rev. 4-6-2009)

### 1. DEFINITIONS

"Seller" means Teledyne MEC, a business unit of Teledyne Wireless, LLC. "Buyer" means the legal entity purchasing Goods from Seller. "Goods" means the products and services offered by Seller and/or purchased by Buyer. "Offer" means any quote, proposal, or offer to sell Goods provided by Seller to Buyer. "Order" means any purchase order or similar instrument issued by Buyer to Seller to purchase Goods. Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

### 2. ACCEPTANCE

These Terms and Conditions of Sale ("Agreement") apply to all offers made and orders accepted by Teledyne MEC ("TMEC"). Acceptance of your ("Buyer's") order is expressly conditioned upon Buyer's assent to these terms and conditions excluding all other terms and conditions. Any change to this Agreement must specifically be agreed in writing by an authorized representative of TMEC.

Some of these terms may differ from those in Buyer's order or offer, and some may be new. TMEC's failure to object to provisions contained in any communication from you ("Buyer") does not waive the provisions of this Agreement.

Buyer's failure to reject this Agreement within 10 days after receipt, or upon Buyer's receipt of the Goods or acceptance of the service, whichever occurs first, is Buyer's unconditional acceptance of these terms and conditions.

### 3. PRICES

Unless stated otherwise in writing by Seller, all prices are stated in U.S. Dollars and are valid for a period of thirty (30) days from the date of Seller's Offer. Prices offered apply only to the specific quantities, specifications, and delivery schedules set forth in Seller's Offer. Any variation in quantity, specifications, or delivery schedules may necessitate a price and/or delivery schedule adjustment. Unless stated otherwise, all prices for domestic deliveries are F.O.B. Seller's place of shipment, as defined in the Uniform Commercial Code (UCC).

### 4. CREDIT APPROVAL AND PAYMENT

Credit terms, shipments, deliveries, and performance of work are at all times subject to the approval of TMEC's credit department. TMEC may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or satisfactory credit terms and security. In the event of Buyer's bankruptcy or insolvency, TMEC will be entitled to terminate any order then outstanding and to receive reimbursement for Termination under this Agreement.

Payment terms for domestic orders are net 30 days from date of invoices. No prompt payment discounts are authorized. Seller reserves the right to collect interest on all amounts due to Seller but not paid by Buyer on the due date. Interest will be payable by Buyer to Seller in U.S. Dollars, at a rate that is equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the maximum interest rate permitted under applicable law. Interest accrues on the balance of unpaid amounts as of the date on which portions of those amounts become due until the date payment is received by Seller. Buyer will

also be liable to Seller for any expenses incidental to collection of past due amounts, including reasonable attorney's fees and court costs.

Each shipment is a separate and independent transaction and Buyer must pay accordingly.

### 5. TAXES

TMEC will add to the purchase price the amount of any present or future sales, use, excise, import duty, or other tax applicable to the manufacture and sale or lease of the Goods under this Agreement and the Buyer must pay these amounts unless the Buyer provides TMEC with a tax exemption certificate acceptable to the taxing authority.

### 6. SHIPPING TERMS AND RISK OF LOSS

All domestic shipments by TMEC are F.O.B. TMEC shipping place, as defined by the Uniform Commercial Code. Freight will be collect, charged to your (Buyer's) account or prepaid and added to invoices.

### 7. TOOLING

Unless specifically agreed in writing by TMEC and Buyer, all equipment, tools, designs, technical data, and computer software produced, acquired, or used by TMEC for this Agreement are the property of TMEC.

### 8. INPROCESS INSPECTION AND TESTS, AND PACKING, PACKAGING

TMEC provides commercial packing, packaging, and TMEC's usual tests at the quoted prices. Any additional requirements, including without limitation Buyer's source inspection, are at Buyer's expense.

The Goods under this Agreement are furnished with TMEC's usual inspection standards at the place of manufacture. If TMEC and Buyer agree that Buyer is to inspect or provide for inspection at the place of manufacture, that inspection may not interfere unreasonably with TMEC's operations, and the Buyer must accept or reject the Goods before shipment.

If the contract provides for inspection and/or acceptance at destination, Buyer will promptly notify TMEC of nonconformance(s) in the Goods upon receipt, and afford TMEC a reasonable opportunity to inspect the Goods. No Goods may be returned without TMEC's prior authorization.

### 9. FINAL INSPECTION AND ACCEPTANCE

Final inspection and acceptance will be at TMEC facility in Rancho Cordova, California.

### 10. EXPORT COMPLIANCE; FOREIGN CORRUPT PRACTICES ACT

For any resale, export, or re-export of the Goods, Buyer must comply with all applicable export regulations, export licensing requirements, and the United States Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd1 through 78dd3, as amended.

**11. DELIVERY AND FORCE MAJEURE**

Shipping dates are approximate and require prompt receipt of all necessary information from Buyer. If delays arise, TMEC will notify Buyer and TMEC will not be liable for any damages (liquidated or otherwise), re-procurement costs, cover, or penalties. TMEC is not liable for delays due to weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of TMEC. In the event of delay, TMEC will defer delivery for a period that accounts for the time lost because of the delay. If an excusable delay under force majeure continues for more than 6 months, TMEC and Buyer each may cancel the affected purchase orders under Article 12, Termination and Change Orders.

If TMEC's production is curtailed for any of the above reasons so that TMEC does not deliver the full amount ordered, TMEC may allocate production deliveries among its various customers then under contract for similar Goods. The allocation will be commercially fair and reasonable and TMEC will notify Buyer of the estimated quota made available.

**12. TERMINATION AND CHANGE ORDERS**

Buyer may request to terminate the order for convenience in whole or in part and TMEC agrees to cooperate with Buyer to try to arrange a termination subject to Buyer paying TMEC for deliveries made, full direct and indirect costs, settlements with suppliers, related administrative, accounting, and legal costs and fees, plus a normal profit.

Buyer may, by written notice to Seller at any time before completion of order, make changes within the general scope of the order in any one of the following: (a) drawings, designs, or specifications when the supplies to be furnished are to be specifically manufactured for the Buyer in accordance with the drawings, designs, or specifications; (b) method of shipment or routing; (c) place of delivery. If any such change causes an increase to the price, or the time required for the performance of any part of the work under the order, the Buyer shall make an equitable adjustment to the price or delivery schedule, or both.

Buyer must make termination and change order requests in writing and they will not be effective unless TMEC consents in writing to the termination or change.

**13. LIMITED PRODUCT WARRANTY-TRAVELING WAVE TUBES**

Teledyne MEC (TMEC) warrants that each new Traveling Wave Tube (hereinafter referred to as "Product") manufactured by TMEC will be free from defective workmanship and materials under normal installation (in accordance with TMEC setup instructions), use and service for a period of one year (12 months) from the date of its shipment from TMEC.

TMEC's obligation under this warranty is limited to repairing, adjusting or replacing Products which have been returned to TMEC within the warranty period and found by TMEC examination to be defective.

This warranty does not apply to any appearance items of the Product nor to any Product which has been damaged or defaced, which has been subjected to misuse, neglect, accident, inundation, fire, abnormal service or handling; or which has been altered or modified in design or construction after shipment from TMEC. In no event shall TMEC be liable or in any way responsible for any damages or defects in the Product which were caused by repairs or attempted repairs of the Product performed by anyone other than a TMEC employee. Nor shall TMEC be liable or in any way responsible for any incidental or consequential economic or property damage.

To enforce its rights under this limited warranty, the Buyer should ship (prepaid) the Product to the TMEC facility from which purchased. The Buyer shall be responsible for the removal and reinstallation of the Product from or into the end item fixture, device or system within which the Product is operated.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF TMEC. TMEC EXPRESSLY DISCLAIMS ALL RESPONSIBILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND EXPRESSLY DISCLAIMS ANY WARRANTIES FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. BUYER AGREES TO INDEMNIFY AND HOLD TMEC HARMLESS FOR ANY LIABILITY ARISING FROM PERSONAL INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE RESULTING FROM USE OF THE PRODUCT.

FOR GOODS MADE BY OTHERS, TMEC MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FREEDOM FROM PATENT INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. THEIR ORIGINAL MANUFACTURER MAY WARRANT THESE GOODS.

**SHIPPING DAMAGE**

Any damage due to shipping is the responsibility of the carrier and the Buyer. Claims against the carrier must be filed promptly by the Buyer in order to facilitate adjustments.

**WARRANTY CONDITIONS**

Repair, adjustment or replacement will be offered by TMEC under the terms of this warranty only if claims are made in accordance with TMEC Warranty Return Procedure. A claim may be initiated by the Buyer by written notification of the failure to TMEC within a reasonable period of time after the failure, but in no event later than twelve (12) months from the date of original shipment by TMEC, and the return of the defective Product itself in accordance with TMEC instructions, not later than thirteen (13) months from the date of its original shipment by TMEC.

Should the Product fail to operate or to meet the applicable Product specification within the warranty period, TMEC at its sole discretion will replace, repair or adjust the Product so that it will meet the specification. In the event that such repair or replacement is affected, the reshipped Product shall be warranted only for the residual balance of the initial warranty period. (The warranty period shall be tolled during the time the Product is at TMEC's facility for repair or replacement.)

**WARRANTY RETURN PROCEDURE**

Buyer must first determine that the Product has in fact failed or is at fault, prior to starting the return procedure.

1. Notify TMEC of the failure, providing sufficient details of the failure mode, prior to the return of the Product to TMEC for failure analysis.
2. Complete Buyer's Failure Report or equivalent documentation, and describe in detail what happened when the failure occurred. Include a copy of that report with the Product when shipping the Product back to TMEC.
3. Ship the Product, freight prepaid, on a memo basis only. DO NOT ISSUE DEBIT MEMOS unless and until you are advised by TMEC to do so after completion of TMEC's final determination of Product failure.

Failure to follow the above return procedures could result in lost Goods, delays, additional service charges, warranty denial, or refusal of a shipment.

## OUT OF WARRANTY RETURNS

If after evaluation it is determined that the Goods are not covered by warranty, including without limitation when TMEC determines that the Goods were damaged after delivery, a purchase order funding TMEC's usual evaluation fee must be received before further action is taken by TMEC. In those circumstances, TMEC reserves the right to dispose of the Goods when the Buyer does not promptly pay the evaluation fee.

## NON-CONFIRMED FAILURES

In the event that a returned Product does not prove defective after TMEC testing and evaluation, the Buyer may be charged TMEC's standard evaluation fee for the returned item (not less than \$1,000) to cover expenses and costs incurred by TMEC.

The warranties described above shall be the sole and exclusive warranties granted by TMEC and shall be the sole and exclusive remedy available to the Buyer. Correction of defects, in the manner and for the period of time described above, shall constitute complete fulfillment of all liabilities and responsibilities of TMEC to the Buyer with respect to the Product, and shall constitute full satisfaction of all claims, whether based on the contract, negligence, strict liability or otherwise.

## 14. INDEMNIFICATION

Each party will hold harmless and indemnify the other party against all claims, judgments, costs and fees, including attorney fees, relating to infringement of U.S. patents, designs, copyrights, or trademarks to the extent that the infringing Goods are manufactured, sold, and used in whole or in part to the indemnifying party's specifications.

To the extent that one party's employees or agents enter on the property owned or controlled by the other party, the first party will hold harmless the other party, its officers, directors, and employees for any property damage or personal injury or death caused by the first party's employees or agents.

In all cases, Buyer will hold harmless and indemnify TMEC against all claims, judgments, costs and fees, including attorney fees relating to actions initiated and claims made by third parties for property damage and personal injuries, including death, when any product made pursuant to this Agreement is manufactured in whole or in part to Buyer's designs. Provided, however, indemnification and hold harmless does not apply where the product defect is caused solely by a manufacturing process, assembly operation, or the negligence of TMEC.

## 15. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ORDER, UNDER NO CIRCUMSTANCES IS EITHER PARTY LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, MULTIPLE, ADMINISTRATIVE, OR PUNITIVE DAMAGES, OR ANY DAMAGE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS CONTRACT, WHETHER BASED UPON BREACH OF CONTRACT, WARRANTY, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. TMEC'S TOTAL LIABILITY INCLUDING BUT NOT LIMITED TO LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS DOES NOT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER/RECEIVED BY SELLER FOR THE ITEM GIVING RISE TO THE CLAIM AND BUYER AGREES TO INDEMNIFY TMEC FOR ANY AMOUNTS IN EXCESS. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISIONS OF THIS

CONTRACT, THOSE PROVISIONS ARE AMENDED AS REQUIRED TO MAKE THEM CONSISTENT WITH THIS LIMITATION OF LIABILITY.

## 16. ARBITRATION AND LAW

Disputes that arise under this order that TMEC and the Buyer cannot settle amicably will be settled by arbitration in Los Angeles, California in the United States of America under the prevailing rules of commercial conciliation and arbitration of the American Arbitration Association. Judgment upon the arbitration award or decision may be entered in any court having competent jurisdiction. Arbitration awards and decisions are subject to the Limitation of Liability set forth in this Agreement.

The laws of the State of California excluding its conflicts of laws provisions govern the interpretation and enforcement of this contract.

## 17. ASSIGNMENT

Buyer may not assign or transfer this Agreement or any Order, in whole or in part, without the prior written approval of Seller.

## 18. ETHICS AND VALUES

TMEC is committed to uncompromising ethical standards, strict adherence to law and to customer satisfaction. We encourage you to communicate concerns, as well as ask questions, about ethics and values to the Teledyne Ethics/Help Line, "Take The Right Action," at 1-877-666-6968.

## 19. UNENFORCEABLE PROVISIONS

In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision which lawfully enforces the parties' intention underlying the invalid or unenforceable provision.

## 20. SURVIVAL

The following Articles will survive the termination or expiration of this Agreement or any Order: 1: Definitions; 4: Credit Approval and Payment; 5: Taxes; 6: Shipping Terms and Risk of Loss; 7: Tooling; 9: Final Inspection and Acceptance; 10: Export Compliance; Foreign Corrupt Practices Act; 11: Delivery and Force Majeure; 12: Termination and Change Orders; 13: Limited Product Warranty; 14: Indemnification; 15: Limitation of Liability; 16: Arbitration and Law; 17: Assignment; 19: Unenforceable Provisions; 20: Survival; 21: Proprietary Information; 22: Federal Acquisition Regulations (FAR); and 23: Whole Agreement; Amendment.

## 21. PROPRIETARY INFORMATION

It will be the responsibility of both parties involved to protect information received by either party from unauthorized disclosure.

## 22. FEDERAL ACQUISITION REGULATIONS (FAR)

TMEC will comply with the FAR clauses required for subcontracts by FAR Part 12, Acquisition of Commercial Items.

## 23. WHOLE AGREEMENT; AMENDMENT

This Agreement is the final, complete, and exclusive statement of the agreement between TMEC and the Buyer and it supersedes all previous and contemporaneous understandings or agreements. This Agreement may be amended or modified only in writing by authorized representatives of the parties.