

# HK Film Capacitor Ltd.

1/F. Po Yip Building, 23 Hing Yip Street, Kwun Tong, Kln., Hong Kong

Tel : (852) 27958793 Fax : (852) 27958189

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## TERMS and CONDITIONS of SALE

The following terms and conditions of sale will apply to any sale of products by HK Film Capacitor Ltd. ("Seller"), to an unrelated party ("Buyer"). The terms "purchase order" or "sales order" are documents detailing the purchase of products by "Buyer" from "Seller". "Purchase Order" and "Sales Order" are synonymous for these terms and are herein referred to as "Orders". Change Order is written documentation depicting a change in terms to an existing order.

1. Acknowledgments and Acceptance. Orders are not valid until confirmed by Seller. Confirmation may be either in writing to Buyer, or the performance under the terms of the order. All confirmed Orders are final. Seller must pre-approve any requested changes to delivery dates or quantities on any open Order. Due to build schedules or inventory requirements, Seller may deny any requested changes to purchase orders previously confirmed. Any approved changes must be affirmed by written Change Order document. Cancellation or reductions in quantities may result in surcharge. The acknowledgement of this order by the seller or commencement of any performance by the seller pursuant to this order shall constitute Buyer's acceptance of the Seller's terms and conditions and the prices set forth therein. Order is expressly conditioned upon the applicability of Seller's terms and conditions exclusively. No terms or conditions stated by the purchaser shall be binding on the seller unless; the Seller expressly accepts such terms or conditions in writing. The failure of the Seller to specifically object to any or all the terms and conditions set forth herein and the purchaser, upon the acknowledgment of the quotation or upon Seller's commencement of performance hereunder, shall be deemed to have withdrawn any such terms and conditions that conflict with, or are in addition to the terms and conditions set forth herein.

## 2. WARRANTY:

- a. HK Film Capacitor Ltd, do our best to keep each of our product free from defects in material and workmanship under normal use and service. The obligation and liability of Seller under this warranty is limited to the repair or replacement at our factory, at the option of Seller, of any such product which proves defective within six (6) months after delivery to Buyer and is found to be defective in material and workmanship by Seller inspection and evaluation. Seller shall not be obligated or liable under this warranty for apparent defects which examination discloses are due to tampering, misuse, neglect, improper storage, normal wear and all cases where the products are assembled into a system, by the Buyer, or removed from an assembled condition. Products for warranty consideration shall be returned to Seller with adequately packaged to prevent loss or damage in shipment. Products repaired or replaced under this warranty are warranted for a new, full, warranty period.
- b. Other than the liability set forth in any expressed warranty applicable to the products sold to the Buyer, Seller shall not be liable for consequential, incidental or other type of damages and expressly excludes and disclaims such damages resulting from, or caused by, the use, operation, failure, malfunction or defects of any products sold to the Buyer under any order, it being understood that the products sold to the Buyer are not consumer products.
- c. SELLER DISCLAIMS ANY LIABILITY WHETHER UNDER THIS WARRANTY, OR OTHERWISE, FOR ANY FAILURE OF ITS PRODUCT WHICH IS CAUSED BY, IN WHOLE OR IN PART, THE USE IN, OR WITH COMPONENT PARTS NOT MANUFACTURED BY SELLER.
- d. THE TERMS OF THE APPLICABLE WARRANTY OR WARRANTIES, AS THE CASE MAY BE, AS SET FORTH ABOVE, ARE THE SOLE AND EXCLUSIVE WARRANTY TERMS THAT SHALL HAVE ANY FORCE AND EFFECT IN THIS ORDER, AND SUCH TERMS, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREWITH EXPRESSLY EXCLUDED.
- e. Seller is not responsible for any kind of possible damages to persons or things due to improper installation and application of capacitors for power electronics.

3. Technical Specification. Unless otherwise provided for, all Orders must refer to an HK Film Capacitor Part Number, and so state on the face of the Order. Buyer's Part Numbers, which are assigned by the Buyer for convenience, may only be used in conjunction with the appropriate HK Film Capacitor Part number. Buyer's Part Numbers, which depict a controlled version of an HK Film Capacitor Product, may only be used, where the Customer Source Controlled Drawing for that configuration has been reviewed and approved by Seller, and acknowledged by Order confirmation.

4. Delivery Schedule and Force Majeure. Delivery schedule is set at confirmation of Order. Any quoted delivery from Stock Inventory is subject to prior sale. Any purchase order with deliveries to a future schedule, must have all shipments complete within 12 months of purchase order date. Changes to delivery schedule may result in surcharge. Anything to the contrary notwithstanding, the seller shall not be liable for any reasonable delay in production or delivery. In the event a delay in production or delivery occurs beyond a reasonable period of time, which delay is occasioned by fire, strikes civil or military authority, war, hostility, riots, government action, energy crises, the failure of seller's suppliers to make timely delivery of material or components, or where such delay is occasioned by other causes beyond the control of the seller or without its fault or negligence, then the date or dates for delivery of the equipment shall be extended for a period equal to the time lost by reason of any such delay.

5. Expedited Delivery. Deliveries that are expedited or requested prior to standard lead times or previously confirmed schedule are on a best efforts basis. Seller bears no responsibility or liability due to its inability to perform to any expedited delivery date.

## 6. Invoicing and Payment.

- i) Standard Products : Seller will provide payment terms in response to Purchase Order Request. Payment terms will be set by confirmation of Order. Orders must indicate agreed payment terms, in writing, on face of Order. Invoices will be prepared at time of shipment and delivered to Buyer according to Order instructions. In the event payments are not made in a timely manner Seller may either (1) declare Buyer's performance in breach and terminate any Buyer's Order, for default; (2) withhold future shipment under any

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Buyer's Order until delinquent payments are made; (3) deliver future shipments under any Buyer's Order on a C.O.D. or cash in advance basis even after the delinquency in payment is remedied; or (4) combine any of the above rights and remedies as is practicable and permitted by law.

- ii) Customized Products : The product need to manufacture according to customer's application need and condition. The payment terms may either (1) Full advance payment when order is confirmed; (2) 30% down payment and the balance L/C at sight (3) 50% down payment and balance before shipment. The down payment / deposit is non-refundable.
- iii) New Overseas buyer/customer : The payment terms may either (1) Full advance payment when order is confirmed; (2) 30% down payment and the balance L/C at sight; (3) 50% down payment and balance before shipment. The down payment / deposit is non-refundable.
- iv) Buyer needs to arrange payment according to the agreed payment terms without delay.
- v) Delay payment might lead to Termination of any signed agreement between the Buyer and Seller. For such case, Seller will send written notice of termination to the Buyer.

Nothing herein shall waive any other rights and remedies of seller permitted by law or set forth in any Order, and all rights and remedies set forth herein shall be considered cumulative and all other available rights and remedies. For the paid down payment or deposit for the overdue orders is Non-Refundable, cannot be transferred to other order and cannot be reinstated and placed on a different order. Seller reserve the right not to make shipment for the delay payment orders.

For the overdue payment over three months from the payment due day, Seller can deal with the overdue ordered product(s) whatever way which is convenient to the Seller without any compensation to the Buyer.

7. Packaging and Shipping. All orders are packaged and boxed to prevent damage in shipment. All packages bear a packing slip on the outside of the package. Special packaging labels, must be specified by, and clearly documented on Order, and affirmed by Seller's confirmation of Order.

8. Ex-Work. Risk-of-Loss. All orders are Ex-Work Hong Kong. Orders are shipped per Buyer's instructions provided on confirmed Order.

9. Proprietary Rights : Seller shall retain all right, title, and interest in and to any data, information, tools, specifications, ideas, concepts, inventions, works of authorship, products, know-how, processes, techniques, and the like used or developed by Seller, its employees, and its subcontractors in connection with Buyer's Order. Buyer agrees that Seller retains all proprietary rights in and to all products, specifications, designs, discoveries, inventions, patents, copyrights, trademarks, trade secrets, and other proprietary rights relating to Goods. Unless otherwise identified in writing to Seller, no information or knowledge heretofore or hereafter disclosed to Seller in the performance of, or in connection with, the terms hereof, shall be deemed to be confidential or proprietary and any such information or knowledge shall be free from restrictions, other than a claim for patent infringement, as part of the consideration hereof.

10. Governing Law and Venue : The performance of the Parties, and any judicial or arbitration proceedings, shall be construed and governed in accordance with the laws of Hong Kong.

11. Disputes and Arbitration : The Parties shall attempt to resolve any dispute, controversy, or claim arising under or relating to Seller's Offer or Buyer's Order, or to a material breach, including its interpretation, performance, or termination. If the Parties are unable to resolve such dispute, either Party may refer the dispute to arbitration. The arbitration shall be conducted in Hong Kong and in accordance with the Rules of Arbitration of the International Chamber of Commerce, by a person or authority to be mutually agreed upon. The arbitration, including the rendering of the decision and/or award, shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitrator shall make the final determination as to any discovery disputes between the Parties. Examination of witnesses by the Parties and by the arbitrator shall be permitted. A written transcript shall be made and furnished to the Parties. The cost of this transcript shall be borne equally by the Parties. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based, and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. Both Parties waive their right to any appeal under any system of law. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. The arbitrator shall have no authority to award any of the types of damages excluded by hereunder, and shall be so instructed by the Parties.

12. NON-CANCELLABLE AND NON-RETURNABLE :

- i) Unless otherwise expressly agreed to in writing by Seller, all items purchased shall be considered Non-cancellable and Non-returnable (NC/NR).
- ii) In case, customer need to cancel the order, all the paid deposit or payment cannot be refunded.
- iii) Our company reserve the right to claim customer for any loss arise from the order cancellation. And customer agrees to compensate our material loss and other costs due to their order cancellation.
- iv) The agreed or confirmed delivery schedule, customer cannot postpone without our consent.

13. Product Improvement : The Seller reserve the right to make process and/or product improvements as long as the full intent of the Good specifications are met.