

HOVER-DAVIS - TERMS AND CONDITIONS OF SALE

1. Definitions

"Seller" means Hover-Davis. "Buyer" shall mean the person or entity to whom this quotation or order confirmation is addressed, which person or entity is bound by the terms and conditions set forth herein.

2. Conditions of Agreement

This quotation or order confirmation is intended as an offer to sell the specific goods and or services ("Product(s)") described on the reverse side hereof (or attached hereto) at the prices stated therein. Seller hereby expressly objects to any terms contained in Buyer's acceptance that are different from or additional to those contained in this offer. The Terms and Conditions set forth herein may not be changed, modified or added to except in a written agreement signed by Seller. In the absence of such written agreement, issuance of a purchase order or other form of acceptance of this quotation or order confirmation by Buyer shall constitute Buyer's agreement to be bound by the Terms and Conditions set forth herein, regardless of any contrary provisions contained in any purchase order or other form of acceptance of Buyer. Any price quotation by Seller shall remain valid for sixty (60) days. Notwithstanding the foregoing, Products of non-US origin may be requested at any time based on changes in foreign exchange rates. Services may be provided by Seller or its authorized agent. This offer is contingent upon approval of Buyer's credit by Seller.

3. Shipping Terms

- 3.1 Terms of delivery are ExWorks Seller's dock (i.e.: global manufacturing and warehouse locations) (Incoterms 2010), unless otherwise stated.
- 3.2 Seller's price includes packing and packaging for shipment by padded air ride van or air shipment, as specified by Buyer. An extra charge will be made for ocean and other special packing. Buyer shall specify the carrier and coordinate the schedule for pick-up with Seller's personnel. In the event Buyer fails to timely specify the carrier, Seller shall be authorized to select the carrier and coordinate pick-up. In no event will Seller be responsible for delay, breakage or damage after the Product is delivered to the carrier in good order. Risk of loss will pass to Buyer upon delivery of the Product to the carrier at Seller's dock. Claims for breakage and damage shall be made to the carrier. Partial shipments and transshipments by Seller are allowed.
- 3.3 After delivery and until Buyer shall have paid in full for all Products covered by this Agreement, Seller shall retain a purchase money security interest in the Products and is hereby authorized to file a financing statement to perfect its security interest. Buyer represents and warrants that it has and will maintain in force insurance adequate to protect Seller's interests hereunder, and, if requested, shall supply Seller copies of insurance certificates as evidence thereof.
- 3.4 For shipments within the United States, title shall transfer according to the shipping terms stated in Section 3.1, otherwise title shall transfer upon payment in full.

4. Delivery

- 4.1 The delivery date(s) is Seller's best estimate of when Product will be shipped from its factory. Seller shall not have any liability for losses or damages due to delays in delivery. For standard Products, delivery date(s) will be established at the time an order is acknowledged. For customized Products, confirmation of the delivery date(s) will be provided when the order acknowledgement is submitted to the Buyer, the first progress payment is received, and Seller has received the specified technical samples and information required for work to begin.
- 4.2 Delivery date(s) are contingent upon:
 - 4.2.1 credit approval of Buyer.
 - 4.2.2 timely receipt by Seller of required financial documents from Buyer.
 - 4.2.3 timely receipt by Seller from Buyer of any drawings, sufficient parts, instructions or similar items, when such items are required for design and/or test.
 - 4.2.4 Buyer providing auxiliary equipment or personnel when required.
 - 4.2.5 timely receipt of components integral to the design and/or specified by the Buyer, which may have unexpected long lead deliveries.
 - 4.2.6 receipt of progress payments per payment terms.A delay encountered due to one or more of the above cause(s), at Seller's option, shall result in a Product price increase of one percent (1%) for each calendar day delayed.
- 4.3 Seller shall not be responsible for and Buyer shall have no right of cancellation for delays in Seller's performance due to causes beyond Seller's control including but not limited to acts of God, war whether declared or undeclared, fire, strikes, transportation delays, and failure of suppliers to deliver.
- 4.4 Buyer is responsible to advise Seller, prior to placing an order, whether local codes or standards apply to the Product, and Seller shall be entitled to quote compliance with any such codes or standards. Buyer shall obtain all licenses, permits and certifications required for compliance with local laws, rules and regulations. Buyer is responsible for all facility related issues and modifications.
- 4.5 Unless noted on the quotation or specification response, installation is not included.

5. Payment Terms

- 5.1 Seller will invoice upon shipment of Product. Payment is due in full, in US funds, Net 30 days from date of invoice.
- 5.2 Other payment currencies and payment terms may be quoted at Seller's discretion.

6. Warranty

6.1 Products

- 6.1.1 For a period of 12 months, unless otherwise stated, from the date of Product shipment, Seller warrants the Products will:
 - 6.1.1.1 Be free from defects in material and workmanship;
 - 6.1.1.2 Conform to quoted terms.
- 6.1.2 If Buyer reports what is believed to be a defect covered under this warranty, Seller will promptly respond and initiate appropriate corrective action. If the problem is covered under warranty, Seller will, at its discretion, promptly make the repairs or replacement at no charge to Buyer subject to Section 10.1. Rebuilt parts may be used. On-site warranty service will be conducted during regular first shift hours, unless mutually agreed. A premium may be charged for off-shift warranty service.
- 6.1.3 This warranty is limited as follows:
 - 6.1.3.1 This warranty is not transferable without the express written agreement of Seller.
 - 6.1.3.2 Refurbished Products may be subject to additional limitations which, if applicable, will be stated on Seller's quotation.
 - 6.1.3.3 This warranty does not cover consumable parts that wear in normal Product operation.
 - 6.1.3.4 Spare parts sold by Seller are covered by a separate sixty (60) day warranty.
 - 6.1.3.5 This warranty does not cover defects or failure that result from any of the following factors:
 - 6.1.3.5.1 Noncompliance with Seller's installation, operation, calibration, maintenance and setup/adjustment specifications and procedures.
 - 6.1.3.5.2 Changes that are made to the Products without written approval from Seller.
 - 6.1.3.5.3 Misuse or abuse of the Product; dust and other environmental factors, including but not limited to damage associated with complementary equipment not supplied by Seller.
 - 6.1.3.5.4 The use of replacement parts other than those supplied by Seller.
 - 6.1.4 The warranty on components not manufactured by Seller is limited to the warranty provided by the original manufactures of said components. Where there are major third-party items integrated into an assembly system, Seller will provide the warranty of those components at time of final quote.
- 6.2 THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATURORY, EXPRESSED, OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT AS TO TITLE.

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7. Patent and Copyright

Except as provided elsewhere herein, if notified in writing within 30 days of any claims made or action brought against Buyer, Seller will settle or defend, at Seller's expense, all proceedings or claims against Buyer, its subsidiaries and affiliates for alleged infringement of U.S. patents and copyrights granted as of the date of this quotation where such patents or copyrights cover goods or parts contained in the Products that are furnished hereunder by Seller. Seller's liability in this regard shall be limited to the total amount paid by Buyer to Seller for the Product(s) giving rise to such claim(s).

Seller shall have sole control of the defense of any such action and all negotiations for its settlement, and may at its option procure for Buyer the right to continue using the Product, replace or modify the same so that it becomes non-infringing, or if in Seller's judgment such remedies are not reasonably available, grant Buyer a refund for the depreciated value of the Product and accept its return. Seller shall not have any liability hereunder based upon compliance required of Seller with engineering drawings or manufacturing instructions originating with or furnished by Buyer, its subsidiaries or affiliates, if such compliance gives rise to such proceedings or claims.

8. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST REVENUES, LOST PROFITS OR ANY OTHER INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE LOSSES OR DAMAGES, HOWEVER CAUSED, WHETHER IN ACTION FOR BREACH OF CONTRACT, STRICT LIABILITY, TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. IN NO EVENT WILL SELLER'S LIABILITY EXCEED THE TOTAL AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCT(S) GIVING RISE TO SUCH CLAIM(S).

9. Changes, Cancellation

A purchase order may be amended from time to time by written change order, agreed by both parties, setting forth the particular changes to be made and the effect of such changes on the price, time of delivery, and other terms and conditions.

Buyer shall have the right to cancel any order in whole or in part, for Product as yet undelivered, as a result of Seller's material breach of these Terms and Conditions with respect to such order. Seller's liability arising from such cancellation is expressly limited to a refund of any monies paid by Buyer for such cancelled Product. In addition, prior to delivery of ordered Product, Buyer shall have the right to cancel its order in whole or in part, at its discretion. A cancellation hereunder shall become effective upon notification by Buyer to Seller and Buyer shall send Seller an amendment to the order in confirmation thereof. In the event of a cancellation for reasons other than Seller's material breach, Buyer agrees to pay Seller the amounts in the schedule below to compensate Seller for any non-recoverable costs incurred or to be incurred in good faith in connection with the Products, including a reasonable allowance for storage costs, overhead and profit. Payments made by the Buyer to the Seller prior to delivery shall be applied to cancellation fee.

Standard Products:

Days Prior to Originally Scheduled Ship Date	Cancellation Fee
0-15	50% of Product cost
16-30	30% of Product cost
30+	20% of Product cost

Customized Products:

Days Prior to Originally Scheduled Ship Date	Cancellation Fee
0-15	100% of Product cost
16-30	80% of Product cost
30+	70% of Product cost

Notwithstanding the above, parts designated as customized or make-to-order cannot be cancelled or returned.

10. Returns

10.1 During the warranty period, to return defective parts for exchange under the warranty program, Buyer must obtain a return authorization number (RMW #) from Seller. Buyer must supply Buyer's original purchase order number and Seller's invoice number. To ensure prompt service, shipments must be properly packaged (printed circuit boards must be packaged using anti-static packaging and must be wrapped in foam) and identified with the RMW # on the outside of the box and on the packing list. If a defective part is not returned within 30 days of receipt of RMW #, Buyer may be liable for the current list price of such replacement part.

10.2 Seller will accept the return of parts ("Returns"), at no charge to Buyer, for credit up to 30 days from receipt of RMW in accordance with the following guidelines:

10.2.1 Buyer must obtain an RMW # from Seller. Buyer must provide Buyer's original purchase order number and Seller's invoice number when requesting the RMW #. Buyer must be prepared to give the Seller a detailed explanation of the problem or reason for return. The RMW # must be clearly marked on the outside of the Return package and on the packing list to avoid processing delays. The RMW # will be valid for a period of 30 calendar days from the date of issuance. Returns received after that time are subject to further evaluation and potential return to originator.

10.2.2 Returns will not be accepted for parts (i) designated as customized or make-to-order or (ii) determined to be obsolete or non-active.

10.2.3 All Returns must be new and in "as purchased" condition.

10.2.4 Buyer is responsible for ensuring that Returns are properly packaged. Credit will not be issued if Returns are damaged due to improper packaging. PC boards must be in their original, unopened packaging.

10.2.5 Returns must be shipped freight prepaid.

10.2.6 Any Returns returned 30 to 90 days from the time of invoice will be subject to a 30% restocking charge. Any Return requested after 90 days will be granted at Seller's discretion.

11. Installment Delivery

Notwithstanding the provisions and limitations of Section 9, above, if Buyer's order provides for delivery in installments, Seller may manufacture the entire quantity at one time, and deliver in accordance with the order. If Buyer defaults in any way under the order subsequent to completion of manufacture of its Product(s), the balance of the entire purchase price remaining unpaid will immediately become due and upon receipt of such payment the balance of deliveries shall be made.

12. Design Ownership

Any specifications, drawings, or other technical information, data, tools, dies, patterns, masks, test equipment, software and any other item designed, supplied, or created by Seller in performance of Buyer's order shall remain the exclusive property of Seller, and no right, title or license in any such item or design is hereby granted to Buyer. Buyer acknowledges that Seller's and/or third party software is licensed to the original End-User for use with the Product with which it is delivered and that title to and all ownership interests are retained by Seller and/or the third party owner. Software license provisions apply.

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13. Taxes

Taxes, duties and fees are the responsibility of Buyer. Buyer shall pay all applicable sales, use, turnover, VAT, GST, or other taxes, duties, and fees of any nature whatsoever due upon sale or importation of Products directly to the collection authority. In the event, Seller is required by a third party to pay any such tax, duty, or fee, Buyer shall reimburse Seller therefore promptly upon notice by Seller. Buyer hereby indemnifies Seller against any claims, penalties or suits arising from failure to pay any such taxes as may be legally due.

14. Insolvency and Assignments

Either party shall have the right to cancel any order in the event that the other party becomes bankrupt or makes a general assignment for benefit of creditors. Buyer may not assign any of its rights or obligations hereunder without the written consent of Seller, which will not be unreasonably withheld.

15. Law

This Agreement shall be governed by, subject to and construed according to the substantive laws of the State of New York, notwithstanding the conflict of laws provisions. The Convention on Contracts for the International Sale of Goods is hereby expressly excluded. Buyer shall comply with all applicable U.S. laws, rules and regulations concerning export from the United States or re-export of any item purchased hereunder, and shall notify Seller prior to any such export activity.

16. Dispute Resolution

In the event that a dispute between the parties cannot be amicably resolved within six (6) months of the date upon which a written complaint is first made, then such disputes may otherwise be resolved, but only by:

- 16.1 For shipments to the People's Republic of China – arbitration in accordance with the arbitration rules of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. Such arbitration shall take place in Rochester, New York USA if initiated by Buyer, and in Shanghai, PRC if initiated by Seller. The language to be used under the arbitration shall be English. Award given under the arbitration shall be final and binding upon the parties hereto, and judgment upon the award entered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 16.2 For all other shipments – commencement of a legal action in a court of competent jurisdiction that is located in Rochester, New York. The parties also agree that New York law shall govern such litigation, and that neither arbitration nor mediation shall be used to resolve any dispute unless a prior written agreement to do so is executed by both parties.

17. Severability, Headings

Any provision hereunder found to be legally unenforceable under New York law shall be deemed deleted and replaced with a legally enforceable provision having the closest possible intent. All other provisions shall remain in full force and effect. Headings and subheadings are for convenience only and shall not be construed to limit the applicability of individual provisions or sub provisions.

18. Confidential Information

Confidential Information shall mean any information relating to Seller's business, financial condition, client lists, client files, strategies, plans, costs of procedures, overhead costs, operations, concepts, products, including the Products themselves, parts, design, layout, images, language, source code and other software, accompanying documentation for any existing or proposed product or service, research, development, testing, the performance of any prototype related to any existing or proposed product or service, or any other information marked "confidential," "proprietary," or with a similar legend and is provided "AS IS".

Buyer shall hold in confidence and safeguard Confidential Information received under this Agreement and shall exercise the same degree of care to prevent disclosure to others as it takes to preserve and safeguard its own Confidential Information, but in any event, it shall exercise no less than a reasonable degree of care. Further, internal disclosure by Buyer shall be limited to only those of its employees who are bound by confidentiality obligations at least as protective as those set forth herein and who have a direct need to know to fulfill the purpose of this Agreement. Internal copying of Confidential Information by Buyer shall be kept to the minimum necessary for the efficient conduct of business, and all confidentiality labels shall be reproduced in full on all copies, whether whole or partial.

Buyer may use Confidential Information solely for the purpose of determining whether entering into a further agreement with Seller is in the best interest of Buyer or for the purpose of facilitating an ongoing, working relationship between itself and Seller or in the furtherance of its business obligations to Seller. Buyer may not use Confidential Information for any other purpose including, without limitation, the use of Confidential Information to compete with Seller or to enable any third party to compete with Seller.

19. General

19.1 Seller's Products are "Commercial Items" as defined in FAR 2.101.

19.2 Seller hereby advises that it will only operate under FAR 52.244-6 when fulfilling a subcontract for a government prime contractor. Therefore, the following FAR clauses are incorporated by reference and made a part of any such subcontract or order to the extent that these clauses are applicable.

- 52.219-8 Utilization of Small Business Concerns
- 52.222-26 Equal Opportunity
- 52.222-35 Equal Opportunity for Veterans
- 52.222-36 Affirmative Action for Workers with Disabilities
- 52.222-50 Combating Trafficking in Persons
- 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels

19.3 If the subcontract is issued in support of a DOD prime contract the following additional clauses are incorporated by reference and made a part of any such subcontract or order to the extent that these clauses are applicable:

- DFARS 252.247-7023 Transportation of Supplies by Sea
- DFARS 252.247-7024 Notification of Transportation of Supplies by Sea

19.4 In accordance with FAR 12.211 the Buyer will receive only those rights in technical data customarily provided by Seller and/or its supplier. By no means will this be interpreted as providing to the Buyer unlimited rights in data, software, or intellectual property rights provided by Seller, its supplier or any other third party.

19.5 Seller hereby rejects the flow down of the requirements of the: (i) Trade Agreements Act, FAR 52.225-5 or DFARS 252.225-7021; and (ii) the Buy American Act, FAR 52.225-1 or DFARS 252.225-7001. There is an exception to the Buy American Act for "information technology" that applies to many of the Products sold by Seller's business. However, Buyer is solely responsible for determining if an exception exists.

19.6 Seller cannot comply with Preference for Domestic Specialty Metals, DFARS 252.225-7014, Alt. 1, unless one of the following conditions is met: 1) its product manufacturers indicate they can comply; 2) an existing Domestic Non-Availability Determination (DNAD) applies; or 3) there is an applicable exception. However, Buyer is solely responsible for determining if a DNAD or an exception exists.

19.7 Buyer shall not knowingly contact or actively solicit an employee of Seller to leave his or her employment with Seller.