Kendeil Electronics S.r.l. General Conditions and Terms of Sale

This document contains the General Conditions and Terms of Sale governing buying and selling between the companies: Kendeil Electronics S.r.l. (the Seller) and its Customers (the Buyers), involving any type of product or service.

Order: this contains a list of products and services requested and any special conditions governing the relationship.

Supply Contract: this contains all the clauses governing more complex relationships in relation to the type of supply.

General Conditions and Terms of Sale: these apply to all Supplies, and can only depart from the provisions of a Contract or an Order when explicitly established. They form an integral and substantial part of each offer and order acknowledgement.

1. General

1.1 These General Conditions and Terms of Sale are applicable together with the special conditions included in our order confirmation. In case of contradiction the special conditions will prevail.

1.2 The supply is subordinate to acceptance of these GENERAL CONDITIONS AND TERMS OF SALE (the document “General Conditions and Terms of Sales”). Application of these General Conditions and Terms of Sale by the Seller is quoted in all order acknowledgements sent to its customers.

1.3 Acceptance, either express or tacit, constitutes the Buyer’s waiver of the application of its own general and special Terms and Conditions of Purchase. Any condition in the Order that modifies, conflicts with or contradicts these General Conditions and Terms of Sale will be considered invalidated and not applicable, unless specified otherwise herein. The Seller will not accept any verbal agreements or commitments stipulated by its representatives and/or agents; any departure from these terms and conditions must be made in writing.

1.4 The Seller reserves the right, at its sole discretion, to modify these General Conditions and Terms of Sale at any time, but it is required to inform the Customer thereof. The order is an irrevocable proposal to buy, but it is deemed accepted by the Seller only following order acknowledgement or execution of the order.

1.5 Any reference made to trade terms (such as EXW, CIP, etc.) is deemed to be made to Incoterms published by the International Chamber of Commerce and current at the date of conclusion of this contract

Kendeil Electronics Srl
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2. Specification, characteristics of the Products - Modifications

2.1 Information and data contained in the section “Technical Information” must be considered as a completing part of each family type of capacitor. Before using a Seller product in any application, please read carefully the related specifications included in the catalogue. An improper installation or not respecting parameters limits might cause damage to the components, their characteristics modification and a decrease of their reliability and useful life. Products manufactured by Seller are made with maximum care, in order to result free of defects in design, materials and workmanship, according with adequate specifications and international standard requirements.

2.2 All drawings, descriptons, characteristic, materials and performance data given by Seller are as accurate as possible but should be considered as a general information, so they are not binding on Seller, unless specifically agreed in writing. Unless otherwise stated, dimensions and materials may be subjected to reasonable variations due to available raw materials or normal manufacturing process tolerances.

2.3 The data and information given in the Technical Information chapter must be considered a part of the single types and product series specifications contained in the general catalogues of Seller.

2.4 Data and characteristics shown in the Seller’s catalogues could be subjected to modifications without notice. Customers or Buyers have always to refer to Seller official web site (www.kendeil.com) for products updated characteristics, last revision specifications, general data and information, products certifications and news

2.5 Any information or data relating to technical features and/or specifications of the Products contained in dépliants, price lists, catalogues and similar documents shall be binding only to the extent they are expressly referred to in the Contract.

2.6 The Seller may make any change to the Products which, without altering their essential features, appear to be necessary or suitable.

3. Rescheduling - Order cancellation

3.1 Purchase orders can be cancelled by the Buyer exclusively upon written notice per email, received by the end of the next business day (17:00 CET) following the Order Confirmation date.

3.2 After this deadline, purchase orders are strictly non cancellable by the Buyer, and the Buyer shall be liable for the total order amount or for all costs incurred up to the date of cancellation.

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4. Delivery Time

4.1 Delivery Time is an estimate, Kendeil does not guarantee a particular date for shipment and shall have no liability for any delay or failure in performance except in a case of gross negligence or willful misconduct.

4.2 If the Seller expects that he will be unable to deliver the Products at the date agreed for delivery, he must inform the Buyer within the shortest delay, in writing o by phone, of such occurrence, stating, as far as possible, the estimated date of delivery. It is agreed that if a delay for which the Seller is responsible lasts more than 10 weeks, the Buyer will be entitled to terminate the Contract with reference to the Products the delivery of which is delayed, by giving a 10 days-notice, to be communicated in writing (also by telefax) to the Seller.

4.3 Any delay caused by force majeure (as defined in art. 10) or by acts or omissions of the Buyer (e.g. the lack of indications which are necessary for the supply of the Products), shall not be considered as a delay for which the Seller is responsible.

5. Delivery and shipment - Complaints

5.1 Except as otherwise agreed, the supply of the goods will be Ex Works, even if it is agreed that the Seller will take care, in whole or in part, of the shipment.

5.2 The Seller shall furnish the packing material and adequately pack the Supply to withstand ordinary strain in transportation.

5.3 In any case, whatever the delivery term agreed between the parties, the risks will pass to the Buyer, at the latest, on delivery of the goods to the first carrier.

5.4 Any complaints relating to packing, quantity, number or exterior features of the Products (apparent defects), must be notified to the Seller, by registered letter with return receipt, within 7 days from receipt of the Products; failing such notification the Purchaser's right to claim the above defects will be forfeited.
Any complaints relating to defects which could not be discovered on the basis of a careful inspection upon receipt (hidden defects) shall be notified to the Seller, by registered letter with return receipt, within 7 days from discovery of the defects and in any case not later than 6 months from delivery; failing such notification the Purchaser's right to claim the above defects will be forfeited.
It’s also understood that minor qualities, colors, dimensions and quantities deviations do not give cause for objections.

5.5 It is agreed that any complaints or objections do not entitle the Buyer to suspend or to delay payment of the Products as well as payment of any other supplies.

5.6 The Seller reserves the right to deliver and invoice up to 10% above the quantity ordered by the Buyer to account for manufacturing yields and packaging constraints. The Buyer agrees to accept the quantity delivered within this limit and to pay the corresponding invoiced amount based on the unit price agreed.

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6. Prices

Unless otherwise agreed, prices are to be considered in EURO / unit measure, taxes excluded, Ex Works, for Products packed according to the usages of the trade with respect to the agreed transport means.

It is agreed that any other cost or charge shall be for the account of the Buyer.

7. Payment conditions

7.1 If the parties have not specified the payment conditions, payment must be made as indicated under article hereunder.

7.2 If the parties have agreed on payment on open account, payment must be made, unless specified otherwise, in advance before the shipment, by bank transfer. Payment is deemed to be made when the respective sum is at the Seller's disposal at its bank in Italy. If it is agreed that payment must be backed by a bank guarantee, the Buyer must put at the Seller's disposal, at least 30 days before the date of delivery, a first demand bank guarantee, issued in accordance with the ICC Uniform Rules for Demand Guarantees by a primary Italian bank and payable against on simple declaration by the Seller that he has not received payment within the agreed term.

7.3 If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment refers to the full price. Unless otherwise agreed, the advanced payment must be credited to the Seller's account at least 15 days before the agreed date of delivery.

7.4 If the parties have agreed on payment by documentary credit, the Buyer must, unless otherwise agreed, take the necessary steps in order to have an irrevocable documentary credit, to be issued in accordance with the ICC Uniform Customs and Practice for Documentary Credits (Publication n. 500), notified to the Seller at least 30 days before the agreed date of delivery. Unless otherwise agreed, the documentary credit shall be confirmed by an Italian bank agreeable to the Seller and will be payable for sight.

7.5 If the parties have agreed on payment against documents (documentary collection) payment will be, unless otherwise agreed, Documents Against Payment

7.6 Unless otherwise agreed, any expenses or bank commissions due with respect to the payment shall be for the Buyer's account.

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8. Warranty for defects

8.1 The Products shall be covered by Seller' s standard warranty of 1 year from the date of shipment by Seller. This warranty will not extend to goods altered or repaired by anyone other than Seller or its authorized representative.

8.2 Seller warrants that goods sold to the Buyer are conform to Seller's standard specifications for such Products or such other specification as are expressly agreed by the Seller and Buyer in writing. It's also understood that all the information and data contained in the section in the catalogues must be considered as a completing part of each family type of Product. Before using a Seller Products in any application, please read carefully the related specifications included in the catalogues. It's clearly understood that in case Buyer won't respect all the limitations, instructions and guidelines included in the product specifications and catalogues, Supplier won't assure any warranty for defects.

8.3 An improper installation or not respecting parameters limits indicated on the catalogues or specifications might cause damage to the products, their characteristics modification and a decrease of their reliability and useful life. Products manufactured by Seller are made with maximum care, in order to result free of defects in design, materials and workmanship, according with adequate specifications. It's clearly understood that in case Buyer won't respect all the limitations, instructions and guidelines included in the product specifications and catalogues, Supplier won't assure any warranty for defects.

8.4 Data sheets specifications and catalogue information are referred to a fairly large number of products and do not constitute a guarantee of characteristics or properties in the legal sense.
However, agreement on these specifications does not mean that the Buyer may not claim for replacement of individual defective Products within the terms of delivery; Seller will not assume any further liability beyond the replacement of defective Products. This applies in particular to any further consequences of component failure as better specified further in this section. A single failure among a delivered batch of products should not be meaningful of poor reliability of the whole production batch, but should be understood to have reached incidentally the end of life within the failure rate defined for each series type.

8.5 The Seller does not warrant that the Products conform to special specifications or technical features or that they are suitable for particular usages except to the extent such characteristics have been expressly agreed upon in the Contract or in documents referred to for that purpose in the Contract or specifications

8.6 In customer applications requiring a very high level of operational safety and especially in customer applications in which the malfunction or failure of a passive electronic component or a Product could endanger human life or health (e.g. in accident prevention of life-saving systems), it must therefore be ensured by means of suitable design of the customer application or other action taken by the customer (e.g. installation of protective circuity or redundancy) that no injury or damage is sustained by third parties in the event of malfunction or failure of a passive electronic component. Any warnings, cautions and product specific notes must be observed.

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8.7 Cooperation between Buyer and Seller is basically precious in order to solve problems or when a failure occurs. In case of failure Buyer has to provide immediate communication to the Supplier with a detailed description of failure, indicating operative condition and type of application, number of defective pieces, eventually expressed in percent on whole quantity used. It is mandatory to know the original batch of goods as printed on the Product sleeve or labeled on the box, also let us know the delivery date and others relevant data from the billing documents. Samples of defective Products should be sent to Seller for analysis, packed in order to prevent additional damages different from the ones detected.

9. Limitation of liability

9.1 Seller liability shall be limited to only replacement or repairing of goods, free of charge, after acknowledge of received notification by customer and after the returning conditions have been agreed with Buyer and Seller has analysed the defective products and authorized the returning of the good by written communication. Any component rejection of samples delivery must be packed and adequately protected in order to avoid any additional damage different from the original detected failure or problem, anyway ensuring the material integrity and protection against environmental conditions.

9.2 Seller is not responsible for any possible damage to persons or things, of any kind, derived from an improper installation, use of application of its product or in case Buyer won't respect all the limitations, instructions and guidelines included in the product specifications and catalogues.

9.3 Seller shall not be liable for any defect due to accident, fair wear and tear, negligent use, tampering, improper handling and shipment, operation and storage or any other default on the parts of any person other than Seller.

9.4 Wherever Buyer applications requiring a very high level of operational safety and especially in customer applications in which the malfunction or failure of a passive electronic component could endanger human life or health (e.g. in accident prevention of life-saving systems), it must therefore be ensured by means of suitable design of the customer application or other action taken by the customer (e.g. installation of protective circuity or redundancy) that no injury or damage is sustained by third parties in the event of malfunction or failure of a passive electronic component. All warnings, cautions and product guidelines must be observed.

9.5 To the maximum extent permitted by above statements, in no event shall Seller or its referred dealers be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption or any pecuniary loss) arising out of the use or inability to use Seller products. In the case of any product liability claim from third parties against Seller, not falling within Seller liability, Buyer should hold Seller harmless.

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9.6 If claim will be accepted by the Seller and such defects have been timely notified in accordance with art. 8.7, Seller's liability shall be limited to only replacement or repairing of goods, free of charge, after acknowledgement of received notification by customer. Seller is not responsible for any possible damage to persons or things, of any kind, derived from an improper installation, use of application of its product or in case Buyer won't respect all the limitations, instructions and guidelines included in the product specifications and catalogues.

9.7 To the maximum extent permitted by above statements, in no event shall Seller or its referred dealers be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption or any pecuniary loss) arising out of the use or inability to use Seller's products. In the case of any product liability claim from third parties against Seller, not falling within Seller liability, Customer or Buyer should hold Seller harmless.

9.8 The Seller will have the choice between repairing or replacing the Products which have shown to be defective. The Products repaired or replaced under the warranty will be submitted to the same guarantee of the standard products starting from the date of repair or replacement. Before to return shipments the Buyer has to receive the previous consent by the Seller. Seller will replace goods for which the claim will be accepted.

10. Retention of title

It is agreed that, the Products delivered remain the Seller's property until complete payment is received by the Seller. The reservation of title is extended to the Products sold by the Buyer to third parties and to the price of such sales, within the maximum limits set forth by the laws of the country of the Buyer which regulate the present clause.

11. Force majeure

11.1 Either party shall have the right to suspend performance of his contractual obligations when such performance becomes impossible or unduly burdensome because of unforeseeable events beyond his control, such as strikes, boycotts, lock-outs, fires, war (either declared or not), civil war, riots, revolutions, requisitions, embargo, energy black-out, procurement or delay in delivery of components or raw materials.

11.2 The party wishing to make use of the present clause must promptly communicate in writing to the other party the occurrence and the end of such force majeure circumstances.

11.3 Should the suspension due to force majeure last more than six weeks, either party shall have the right to terminate the Contract by a 10 days written notice to the counterpart.

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12. Jurisdiction – Applicable Law

12.1 The validity, interpretation, and performance of this Contract and any purchase order issued under this Agreement will be governed by the Italian substantial and procedural law. However, as an exception to the principle here above, the Seller is in any case entitled to bring his action before the competent court of the place where the Buyer has his registered office.

12.2 For any dispute relating to the execution or the interpretation of this contract will be under the exclusive jurisdiction of the Court of Milan, with an express exception to any other competent jurisdiction according to the Italian code of civil procedure.

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