

SIMCONA ELECTRONICS OF CANADA INC. (TERMS AND CONDITIONS)

1. **ENTIRETY OF CONTRACT:** This contract constitutes the entire agreement between the parties and the terms and conditions set forth herein constitute the sole terms and conditions. No other terms or conditions, whether contained in Buyer's purchase order or elsewhere, shall be binding upon Simcona Electronics of Canada Inc. ("Seller"). All proposals, negotiations and representations, if any made prior to the date hereof, are merged herein and no modification shall be effective unless specifically agreed to in writing.
2. **ACCEPTANCE OF ORDERS:** All orders shall be considered as an offer from the Buyer. Acceptance of any order shall occur upon written confirmation from the Seller to the Buyer of the merchandise ordered. Any order for merchandise not in Simcona's inventory shall be contingent upon receiving from our normal supplier all of the merchandise ordered. Our inability or failure to obtain all or any part of merchandise ordered from our normal supplier shall automatically constitute non-acceptance of the part of the order that was not obtained. Any item ordered that is not a manufacturer's standard item is considered a "special" item and as such the Buyer's order for a "special" item is Non-Cancelable and any "special" items are Non-Returnable. Seller reserves the right to ship and bill a percentage of the exact quantity ordered based on the terms of Seller's suppliers. All orders, invoices, statements and other documents are subject to correction of errors by Seller.
3. **PRICES:** a) All prices of Products are specified on the Seller's invoice. Pricing for undelivered Product may be increased in the event of any increase in Seller's cost, change in market conditions or any other causes beyond Seller's reasonable control. Price quotations, unless otherwise stated, shall automatically expire thirty (30) days from the date issued and may be cancelled or amended within that period upon written notice to Buyer.
(b) Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including, but not limited to, federal, state, provincial and local sales, excise, value added, goods and services taxes and any other taxes. Buyer agrees to pay these taxes unless Buyer has provided Seller with an exemption resale certificate in the appropriate form for the jurisdiction of Buyer's place of business and any jurisdiction to which Products are to be directly shipped hereunder, or unless the sale is otherwise exempt from these taxes. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.
4. **PAYMENT:** Terms of payment are net 30 days from the invoice date unless stated differently on the Seller's invoice. Prices of products do not include taxes, freight, handling, or other similar charges which are the sole responsibility of the Buyer. Seller reserves the right to modify terms prior to shipment, require payment in advance or cancel any order by reason of Buyer's credit worthiness.
5. **SHIPPING AND DELIVERY:** In the absence of prior instructions from the Buyer, the Seller will select the carrier for shipment. Seller's responsibility for any loss or damage ends and title passes to the Buyer when the merchandise is delivered to the carrier. All delivery dates are approximate. Because delivery dates depend upon our supplier's inventory, production, shipping schedules and other factors, actual delivery dates may differ substantially from those quoted.

6. **RETURN OF PRODUCTS:** Products will be considered accepted by the Buyer unless notice of rejection is given by the Buyer within thirty (30) days of shipment date. Credit will not be allowed for products returned without prior consent. No return of products will be accepted without a Return Materials Authorization (RMA) number issued by Seller. A complete description stating the reason for the return must be included with the returned products. The returned items must be in the original packing, in original condition and shipped by prepaid freight to Seller's warehouse. Non-Cancelable, Non-Returnable (NCNR) products are non-returnable.
7. **LIMITED WARRANTY:** SELLER MAKES NO EXPRESS WARRANTIES CONCERNING PRODUCTS SOLD AND SELLER HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO AND SELLER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, LOSS OF USE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD EXPENSES, PERSONAL INJURY, INJURY TO REPUTATION OR LOSS OF CUSTOMERS.

Most items sold by the Seller are covered by the manufacturers' warranties. The Seller expressly limits its liabilities to the applicable manufacturer's warranty. Warranty is limited to repair, replacement, or refund of the purchase price paid for the product at the sole discretion of the Seller. Products which Simcona Electronics' Value Added Services division manufactures, terminates, assembles or otherwise alters from the original state in which they were manufactured will carry a warranty to be free from defects in workmanship for a period of one year from the date of shipment. Simcona Electronics will not be responsible for any consequential or indirect damages.
8. **FORCE MAJEURE:** Seller shall not be liable for any prevention or delay in performance resulting in whole or part, directly or indirectly, from fires, floods, or other catastrophes, strikes, lockouts, or labor disruption; wars, terrorism, riots, embargo, import or export quotas, or voluntary mandatory allocations; actions by foreign, federal, provincial, state or local governments; mill and factory conditions; shortages or transportation equipment, fuel, labor or materials; major changes in economic conditions; or any other circumstances or causes beyond the control of Seller in the reasonable conduct of its business. In the event of such prevention or delay in performance, the time for performance shall be extended for a period of ninety (90) days. If performance is not made within such extended ninety (90) day period, Seller shall have the option at any time thereafter and upon written notice to Buyer to cancel the order without liability to either party or to maintain the order in effect and complete performance within a reasonable time after the termination of such prevention or delay.
9. **INTENDED USE:** Buyer acknowledges that products sold by Seller are not intended for use in human implantation systems or any other application where failure could lead to loss of life or catastrophic damage. Seller will not be liable for any loss or damage resulting from or in connection with the use of products in human implantation.
10. **EXPORTED/IMPORTED PRODUCTS:** Products sold to Buyer may be subject to export or resale restrictions and regulations. Buyer acknowledges requirement to comply with all restrictions and requirements in accordance with Canadian export administration regulations. Diversion to other countries contrary to Canadian law is prohibited. Any or all products may have been imported. Country of origin information is provided to Seller by Simcona Electronics and its suppliers and is available upon request.

11. **REMEDIES:** Except for NCNR products, in the event the Seller materially fails to perform, Buyer shall serve specific written notice to Seller of non-performance. If Seller fails to perform within 60 days of receiving written notice, Buyer may cancel the order related to the non-performance. In the event Buyer fails to perform its obligations, Seller may, at its option, pursue whatever remedies are available, including, but not limited to, cancellation of the order/contract and/or recovery of its damages from Buyer, including its expenses, cancellation fee, foreign exchange loss, the merchandise price-market value differential at point of delivery, reasonable legal and professional services fees and any other special or consequential damages.
12. **ARBITRATION:** Any controversy or claim arising out of or relating to any transaction between Buyer and Seller, to this agreement, or the breach thereof, shall be settled by arbitration in London, Ontario, in accordance with the Rules of the Canadian Arbitration Association, and judgment upon the award rendered by the Arbitrator (s) may be entered in any Court having jurisdiction thereof.
13. **APPLICABLE LAW:** The definition of terms used, interpretation of this agreement, and the rights of all parties hereunder shall be governed by the laws of the Province of Ontario. Statements as to product compliance with applicable law (including products that are RoHS compliant without limitation) is either (a) as provided to Simcona Electronics by its suppliers, or (b) interpreted from data available from the applicable law, and Simcona Electronics does not warrant its accuracy and will not be liable for any error with regard to such information. Buyer uses such information at its own risk.
14. **LEGAL FEES AND OTHER COLLECTION COSTS:** Buyer agrees to pay all reasonable expenses incurred to enforce or collect any of the obligations arising from transactions including arbitration, paralegals', attorneys' and other fees and expenses, whether incurred in any trial, court, arbitration or other proceedings.