

MERITEK PURCHASE ORDER TERMS/CONDITIONS

NOTICE - BY ACCEPTING THIS ORDER OR SHIPPING ANY PART OF THIS ORDER VENDOR AGREES:

PRICE INCREASES

1. In the event of price increases on any materials covered by this order, written authorization for shipment at such increased prices must be obtained before shipment is made, and Meritek Electronics Corporation, is under no obligation to pay higher prices than shown on this purchase order.

PRINTING WORK

2. If this is an order for printed matter, all Art Work and Negatives used in producing this or any future printing work become property of the company, and upon completion of the job, vendor will promptly return Art Work and properly store working and composite negatives without cost to the company unless otherwise specified. Vendor further agrees to deliver all or part of such material to the company promptly upon request and in case of loss or damage, to make replacement at vendor's expense.

INDEMNIFICATION

3. To defend, indemnify, and hold harmless the company, its affiliates, officers, directors and employees against, and from all claims and litigation, liability, loss, damages demands, judgments, or expense (including without limitation attorney and experts and statutory and non-statutory cost) without exception arising from (a) any infringement or alleged infringement of patents, copyrights, trademarks, or trade names or any other intellectual property rights; (b) arising from invasion of privacy or publicity; (c) arising from any violation of any Federal or State "Consumer Protection Legislation"; (d) arising from any antitrust or unfair trade practices; (e) arising from or with respect to any civil, criminal, administrative or other action brought or taken by the United States or by any state of any subdivision or agency thereof, relating to the materials, or any part thereof, heretofore, hereby, or hereafter ordered; (f) arising from all damage to property or injury or death to persons without exception, allegedly or actually caused by said materials, whether or not any defect was discoverable by the company; (g) damages or penalties of any sort arising from vendor's failure to comply with any hazardous substances restrictions pursuant to any statute, law or ordinance.

WARRANTIES OF VENDOR

4. Vendor warrants to the company that all materials are and shall be of merchantable quality new (not used or reconditioned) and are and shall be free from defect in materials and workmanship and fit for the particular purpose for which they are ordered or to be used by the consumer. Vendor hereby relieves the company of all duty, without exception, to inspect said materials. Notwithstanding any usage of trade or course of dealing between the parties, vendor's liability for breach of any warranty, express or implied, shall include (1) replacement or repair of defective materials including labor cost for removing the defective material and replacing with next materials (at the company's option) refund of the purchase price; (2) any general, special or consequential damages proximately caused by the breach of warranty. There are no exclusions, limitations or disclaimers of warranty. Warranty shall be construed liberally in favor of the company. Warranty shall run to affiliates, subsidiaries, successors, assigns and customers of the company and users of the company's products.

COMPLIANCE WITH LAW

5. Each shipment or other delivery hereafter made by vendor to or on the order of the company is hereby guaranteed as of the date of each such shipment to be: (a) not in a misbranded package within the meaning of the Federal Hazardous Substances Labeling Act; (b) if said article is manufactured from or contains a "fabric" as defined by the Federal Flammable Fabrics Act, it is hereby guaranteed that tests as required by the Federal Flammable Fabrics Act show that the fabric or related material conforms with applicable flammability standards promulgated pursuant to said Act; (c) not misbranded within the meaning of the Federal Toy Safety Act; (d) not misbranded or inaccurately labeled under the Federal Fair Packaging and Labeling Act or otherwise in violation of the Federal Consumer Products

Safety Act; (e) not in violation of the Federal Occupational Safety and Health Act of 1970; (f) not in violation of any other similar or dissimilar local, State or Federal laws, rules or regulations including any applicable antidiscrimination and equal opportunity law, rule or regulation; (g) in compliance with any restrictions on hazardous substances pursuant to any statute, law or ordinance that prohibits use of any such hazardous substances.

DEFECTIVE MATERIALS

6. If returned by the company to the vendor within one year of the date of delivery to the company of any defective material, the vendor shall give the company an appropriate credit or refund thereof.

INSURANCE

7. Without limiting the obligations of vendor under paragraph "3" above (INDEMNIFICATION), vendor shall maintain in effect beginning on or before the first shipment under this order and to at least six (6) years after the last shipment under this order, at least two million dollars (\$2,000,000) on a occurrence basis, and four million (\$4,000,000) on an aggregate basis with no deductible or self-retention in products liability with a U.S. insurer reasonably satisfactory to the company to defend and indemnify the company, and will, notify the company at least thirty (30) days in advance of any cancellation. An insurance certificate evidencing such insurance or a copy of the policy shall be delivered to the company on its request. If vendor's employees are required to be on the company's premises, vendor shall carry and furnish the company with certificates of insurance for comprehensive general liability, automobile liability and workmen's compensation insurance. Such insurance shall have bodily injury limits of at least \$1,000,000 per occurrence, \$2,000,000 aggregate and property damage limits of at least \$250,000.

NO MODIFICATION

8. No variation in any of the terms, conditions, deliveries, prices, quality, quantity, and specifications of this order, irrespective of the wording of vendor's acceptance, will be effective without the company's written consent. The shipment by vendor of any part of this order shall be vendor's agreement to all provisions of this order without variation or exception.

INSPECTION

9. All material received by the company will be subject to inspection and rejection and rejected material shall be returned at vendor's expense, including transportation charges paid by the company. No replacement of defective material returned will be made unless so specified on the company's return order.

COUNT

10. The company's count will be accepted as final and conclusive on all shipments not accompanied by packing ticket.

SUSPENSION OF DELIVERY

11. In the event of fire, floods, strikes, lockout, accident, sabotage or other causes of like or different nature beyond the reasonable control of the company which occurs at, or which affects, the company, deliveries under this order may be suspended by the company upon notice to vendor during the continuation of such cause without liability to vendor, provided, however, that if such suspension exceeds thirty (30) days either the vendor or the company may cancel by notice to the other (given prior to notice lifting such suspension) the unfilled portion of this order without liability to the other party.

TIMELY DELIVERY

12. The company reserves the right to cancel this order or any unfilled portion thereof if deliveries are not made as specified herein. The company reserves

the right to cancel or postpone deliveries of any of the material which is not shipped to the company's specified place of delivery at the time specified therefore.

PAYMENT BY CHECK

13. The company's local check will be accepted in payment without discount for collecting.

PACKAGING CHARGES

14. The company allows no charge for boxing, packing or crating unless by written agreement.

ASSIGNMENT

15. Vendor shall not delegate any duties, nor assign any rights or claims under this purchase order, or for breach thereof, without prior consent of the company, and any such attempted delegation or assignment shall be void. All claims for money due or to become due from the company shall be subject to deduction by the company for any setoff or counterclaim arising out of this or any other of the company's purchase orders with the vendor, whether such setoff or counterclaim arose before or after such assignment by the vendor.

CANCELLATION FOR INSOLVENCY, ETC.

16. In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the vendor, or in the event of the appointment, with or without the vendor's consent of an assignee for the benefit of creditors, or of a receiver or if the company in its reasonable judgment concludes that vendor's financial condition or ability to perform this order has been adversely affected. Then the company shall be entitled to cancel any unfulfilled part of this purchase order without any liability, whatsoever.

MATERIAL, ETC. FURNISHED BY COMPANY

17. All material, drawings, plans or specifications supplied by the company to vendor or specifically paid for by the company, including without limiting the generality of the foregoing, tooling, fixtures and templates, shall be the property of the company, shall be subject to removal at any time without additional cost upon demand by the company, shall be used only in filling orders from the company, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the company and at the company's request vendor shall insure such inventory of the company's property with loss payable to the company with an insurer reasonably satisfactory to the company in an amount without deductible or self-retention, as reasonably fixed by the company for the full replacement value of such property. Vendor assumes all liability for loss or damage, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory at monthly intervals or as otherwise agreed upon.

TERMS AND PAYMENT

18. Unless otherwise specified in this order, this purchase order and all the provisions thereof must be fully performed and complied with by vendor and all the materials received by the company before payment by the company shall become due. Cash discount period shall begin on the date of receipt by the company of the correct invoice. The company will not pay any finance or service charges unless previously set forth in a written agreement.

REMEDIES

19. Company's remedies shall be cumulative and any remedies herein specified do not exclude any remedies allowed by law including damages for failure to deliver conforming non-defective materials at the time specified therefore. Waiver of any breach of any provision of this order shall not constitute waiver of any other breach of the same or any other provision of this order. Acceptance of any materials or payment therefore shall not waive any provision of this order.

TERMINATION AND CHANGES

20. Company shall have the right to terminate this order, in whole or in part, by giving written, verbal or telegraphic notice to vendor. Upon receipt of such notice, vendor shall, unless the notice directs otherwise, immediately

discontinue the work under this order and the placing of orders for materials, facilities and supplies for the work under this order and shall make every reasonable effort to procure cancellation of all such existing orders or contracts upon terms satisfactory to company. Vendor shall thereafter do only such work as may be necessary to preserve and protect work already in progress. The company reserves the right at any time to make changes in any one or more of the following (a) specifications, drawings and data incorporated in this order where the materials to be furnished are to be specially manufactured for the company; (b) methods of shipment or packing; (c) place of delivery; and (d) time of delivery. If any such changes cause an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the price for the material or delivery schedule, or both. Any claim by vendor for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by vendor of the change. Price increases or extensions of time for delivery by reach of such change shall not be binding on the company unless evidenced in writing signed by the company.

DECREASING PRICES

21. In the event a price for the materials lower than the price specified in this order is currently, or up to the time of shipment of any of the materials covered by this order, is offered to any other purchaser, vendor shall invoice the company at the lowest price so offered for such materials.

MODIFICATION AUTHORITY

22. The Purchasing Department of the company and only the Purchasing Department shall have authority to modify the terms and conditions of this order on behalf of the company and buyer shall not be liable for any action taken in reliance upon the authority of another department. All correspondence to the company shall be addressed to the Purchasing Department. No alleged modification of this order, whether concurrent or subsequent to the issuance of this order, shall be valid or enforceable unless agreed to in writing by an authorized representative of the Purchasing Department of the company.

GOVERNING LAW AND VENUE

23. This order and the performance thereof shall be interpreted, governed and enforced in accordance with the laws of the State of California, exclusive of conflicts of law principles. Any lawsuit arising out of this order shall be instituted in the courts situated in the State of California, and both the vendor and company consents to the personal jurisdiction of such courts and waive any claim of inconvenient forum. Both the vendor and company waive trial by jury.

HEADINGS

24. The headings in this order are for convenience only and do not define, limit or expand the text of the provisions hereunder.