

TERMS AND CONDITIONS OF SALE OR PURCHASE BY FDK

1. **ENTIRE AGREEMENT.** These terms and conditions constitute the entire agreement ("Agreement") between Purchaser and FDK CORPORATION, ("FDK") with respect to FDK's sale of products ("Products") to Purchaser, and may not be contradicted by evidence of any prior or contemporaneous agreement, and contain the necessary and essential terms with respect to FDK's purchase of Products from Vendor. Submission of a purchase order in response to any FDK quotation shall be deemed acceptance of these terms and conditions to the complete exclusion of any other terms in any purchase order. FDK's acknowledgment of Purchaser's purchase order is expressly made conditional upon Purchaser's assent to these terms and conditions, which shall be presumed conclusively from Purchaser's failure to object in writing within five (5) days of receipt hereof or from Purchaser's failure to reject the Products ordered within five (5) days of receipt.
2. **PRICES AND TAXES.** Unless otherwise agreed in writing by FDK, FDK prices are exclusive of taxes, shipping and insurance, which are Purchaser's sole responsibility. All state and local sales, use, excise or other taxes imposed on FDK or which FDK has the duty to collect will appear as separate items on the invoice and will be paid by Purchaser. If sales to Purchaser are exempt from such taxes, Purchaser shall furnish to FDK a certificate of exemption from the applicable taxing authority.
3. **PAYMENT.** Unless otherwise agreed in writing by FDK, payment terms are net thirty (30) days from date of invoice. FDK retains the right to change its credit terms at any time upon notice to Purchaser when, in the opinion of FDK, Purchaser's financial condition or record of payments so warrants. Should Purchaser become delinquent in the payment of any amount due hereunder, or in the event of bankruptcy or insolvency, and regardless of provision for any service charge, FDK, at its option and upon notice to Purchaser, may suspend or terminate any further performance without liability, and Purchaser shall reimburse FDK for its cost of cancellation. If shipment or manufacture is delayed by Purchaser, payment will become due on the date when FDK is prepared to make shipment or on the date which manufacture is delayed, and such payment will be made based on the contract price and the percentage of completion. Products held by FDK or Purchaser by reason of Purchaser's delay will be held at the risk and expense of Purchaser.
4. **DELIVERY AND RISK OF LOSS.** Unless otherwise agreed in writing by FDK, delivery is F.O.B. FDK's facility in Japan. Title and risk of loss for all Products pass to Purchaser upon tender of the Products by FDK to the carrier, provided that FDK reserves a security interest in each Product shipped until the entire amount due therefor has been paid. In the absence of written instructions from Purchaser, FDK will select the carrier, but FDK shall not thereby assume any liability in connection with the shipment. Shipping dates, if any, are approximate and are based on the prompt receipt by FDK of all necessary information from Purchaser. Purchaser may not cancel or modify its order in whole or in part, except on FDK's written approval. Purchaser shall pay for any costs incurred by FDK due to interruptions, engineering changes or modifications caused or requested by Purchaser.
5. **LIMITATION OF WARRANTY.** THE WARRANTY SET FORTH IN THIS SECTION AND THE OBLIGATIONS AND LIABILITIES HEREUNDER ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS SOLD BY FDK, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TOGETHER WITH ANY LIABILITY OF FDK UNDER ANY PROVISION OF THIS AGREEMENT FOR LOSS OF USE, REVENUE OR PROFIT, OR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. FDK warrants that Products sold by FDK hereunder will be free from defects in materials and workmanship under normal use and service for a period of one year from the date of delivery. FDK's entire responsibility and Purchaser's sole and exclusive remedy is, at FDK's option, to replace or repair any defective Product, or to issue a credit for the purchase price of such Product, provided that (i) FDK is promptly notified in writing upon Purchaser's discovery of a defect; (ii) the defective Product is returned to FDK, transportation charges prepaid by Purchaser; (iii) the defective Product is received by FDK no later than one year following the date of original delivery; and (iv) the defect was not caused by misuse, neglect, improper installation, repair, alteration or accident. This limited warranty may not be modified by, and no obligation or liability shall arise from, FDK's rendering of technical advice or service to Purchaser. No person or entity is authorized to assume for FDK any other liability in connection with this Agreement, or the sale of Products hereunder.
6. **PATENT ISSUES.** Purchaser shall indemnify, defend and hold FDK harmless against any expenses, damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, designs, trademarks, copyrights or trade names or for unfair competition arising from FDK's compliance with Purchaser's designs, specifications or instructions. THE FOREGOING STATES THE ENTIRE LIABILITY OF THE PARTIES WITH RESPECT TO ANY INFRINGEMENT CLAIMS REGARDING ANY PRODUCT SOLD BY FDK. Neither the acceptance of any order, nor sale of Products or any parts thereof by FDK confers on Purchaser a license under any patent rights or proprietary information of FDK or any other entity.
7. **TERMS AND CONDITIONS OF PURCHASE BY FDK.** The terms in this Section 7 apply to any order placed by FDK and supersede any inconsistent terms proposed by Vendor. Time is of the essence. Vendor may not modify or cancel any FDK order without FDK's written consent. Vendor warrants that Products furnished hereunder shall be in accordance with the specifications of this order, merchantable and free from all defects in design, workmanship and materials. Vendor agrees that this warranty shall survive acceptance and use of and payment for any Products. Vendor shall indemnify FDK from any and all damages, losses or expenses suffered or incurred on account of any breach by Vendor of the foregoing warranty. Vendor shall indemnify and hold harmless FDK and all persons claiming under FDK against all claims, damages, and liability for unfair competition and for actual or alleged infringement of any patent, trademark, copyright, or other intellectual property right by the Products purchased by FDK. FDK reserves the right to terminate this order for convenience in whole or in part at any time and to pay Vendor as its full compensation the order price for the portion of this order accepted by FDK. Any and all of the rights and remedies conferred upon FDK under this order shall be cumulative and in addition to, and not in lieu of, the rights and remedies granted by law upon Vendor's default.
8. **CONTINGENCIES.** FDK shall not be liable for any failure to perform or delay in performance caused by circumstances beyond its reasonable control which make such performance commercially impracticable, including but not limited to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor shortages, embargoes, or failure or delays in transportation, inability to secure raw materials or machinery, acts of God, or acts of any government authority. In the event of FDK's inability to supply the total demands for the Products specified in Purchaser's orders, FDK may allocate its available supply among any and all of its purchasers as FDK deems fair and practical without liability to Purchaser for any failure of performance which may result therefrom.
9. **NONWAIVER OF DEFAULT.** Each shipment made under any order shall be treated as a separate transaction, but in the event of any default by Purchaser, FDK may decline to make further shipment without in any way affecting its rights under such order. If FDK elects to continue to make shipments, its action will not constitute a waiver of any default by Purchaser or in any way affect FDK's legal remedies for any such default.
10. **ASSIGNS.** This Agreement is binding upon and inures to the benefit of the successors and assigns of FDK and Purchaser or Vendor, but may not be assigned by Purchaser or Vendor without the written consent of FDK.
11. **LIMITATION OF LIABILITY.** IN NO EVENT WILL FDK BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES. FDK'S SOLE LIABILITY FOR THE MANUFACTURE, SALE, DELIVERY, RESALE OR USE OF ANY PRODUCTS PURCHASED HEREUNDER, INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR LIABILITY ARISING FROM BREACH OF CONTRACT OR FROM TORT, WHETHER OR NOT FDK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITY, IN NO CASE MAY EXCEED THE TOTAL AMOUNT OF THE PRODUCTS PAID FOR HEREUNDER AND INVOLVED IN THE CLAIMED BREACH, TORT OR NONPERFORMANCE THEREOF.
12. **EXPORT RESTRICTIONS.** FDK and Purchaser may be subject to Japan and United States laws and regulations controlling the export and re-export of Products purchased hereunder. Purchaser shall neither export nor re-export, directly or indirectly, any Product sold by FDK, or the direct product thereof, to any country to which such export or re-export is restricted by Japan or United States law or regulation without the prior issuance to Purchaser of a license or other proper authorization, if required, by the appropriate governmental authority. FDK makes no representation or warranty that the required license or other authorization should or shall be obtained. Any breach of this provision will be grounds for termination of any order. Purchaser shall indemnify FDK for any damages FDK may suffer as a result of such breach.
13. **GENERAL.** This Agreement is governed by the laws of Japan, without regard to its conflict of laws provisions.