



Cosworth Electronics LLC Standard Terms and Conditions of Sale

Domestic Sales – United States

1. Definitions. “Seller” shall mean Cosworth Electronics LLC, an Indiana limited liability company. “Buyer” shall mean any party who contracts to purchase Goods from Seller, as indicated on a purchase order or an order acknowledgement. “Goods” shall mean those goods and/or related services ordered by Buyer from Seller pursuant to a purchase order accepted by Seller.

2. Terms of Purchase Order Acceptance and Complete Agreement.

a. Acceptance. Buyer’s order for Goods is binding only when accepted in writing by an authorized representative of Seller, which shall always constitute an acceptance subject to all of Seller’s Standard Terms and Conditions of Sale. Any order for Goods that is duly accepted by Seller in writing, shall be deemed accepted as modified by Seller’s order acknowledgement and/or Seller’s Standard Terms and Conditions of Sale, which shall all then constitute the complete agreement between the parties, and no different or conflicting terms, conditions or provisions provided by Buyer shall ever form part of the agreement between Buyer and Seller. Buyer’s acknowledgement of a binding agreement between the parties, or Buyer’s acceptance of delivery of Goods, shall constitute conclusive evidence of Buyer’s acceptance of all of Seller’s Standard Terms and Conditions of Sale.

b. No Acceptance. Seller’s performance under any Buyer purchase order or order acknowledgement does not constitute an acceptance of any provision of any Buyer purchase order that is different from or additional to these Standard Terms and Conditions of Sale, and any such different or additional provisions are hereby expressly rejected and are void.

3. Pricing. All prices stated herein are F.O.B. Seller’s facility in Indianapolis, Indiana, unless otherwise specified by Seller in writing. With respect to orders scheduled for shipment one-hundred-and-twenty (120) days or more after the date of Seller’s order acknowledgement, Seller reserves the right to invoice such shipments according to prices prevailing at the time of shipment. Seller hereby reserves the right, at any time one-hundred-and-twenty (120) days or more after the date of Seller’s order acknowledgement, to modify or update the price of Goods without notice, and all commercially reasonable modifications in price shall become effective and binding immediately.

4. Terms of Payment. All payments are due prior to delivery, unless otherwise specified by Seller. Buyer’s failure to make payment when due will be a material breach of the order and these Standard Terms and Conditions of Sale. Amounts unpaid after such date shall bear interest from the date of the invoice at a rate of one and one-half percent (1.5%) per month, or eighteen percent (18%) per annum. Buyer shall reimburse Seller for all costs and fees, including reasonable attorneys’ fees, incurred by Seller in the collection of any overdue amounts. Seller, at its sole option and without incurring any liability, may suspend its performance until such time as any overdue payment is made or Seller receives assurances, adequate in Seller’s sole opinion, that the payment will be promptly made. In the event of such suspension of performance by Seller, there will be an equitable adjustment made by Seller to the remaining delivery schedule and order pricing to reflect the duration and cost resulting from such suspension. Buyer may only suspend the order upon Seller’s written consent. In the event of such Buyer suspension, the delivery time will be changed, taking into account the suspension, and Buyer shall promptly pay Seller for all costs, including related overhead costs,

resulting from such suspension.

5. Custom Products. Unless otherwise agreed in writing by the parties, orders for Custom Products are non-cancellable by Buyer upon Seller's acknowledgement/acceptance of same. Seller reserves the right to require a minimum non-refundable deposit of any amount up to the full purchase price of the Custom Products. If there is a cancellation for any reason by Buyer, Buyer shall forfeit the entire deposit to Seller, in addition to being liable for any other damages incurred by Seller, as further described in Section 18b hereunder. "Custom Products" mean any Goods manufactured to Buyer's design or specifications, including without limitation, wiring harnesses and strain gauging. For a period of three (3) months following delivery of the Custom Products, Seller warrants that all Custom Products manufactured by Seller will be free from material defects and will materially conform to Buyer's specifications. If Buyer believes any Custom Products are defective or non-conforming within three (3) months of receipt, Buyer agrees to report same in writing and in detail to Seller within thirty (30) days after becoming aware of any such defect or non-conformance and, in any event, within three (3) months from the date of receipt of such Custom Product. Upon timely notice from Buyer, a Return Merchandise Authorization ("RMA") number will be issued by Seller. Buyer will then promptly return such Custom Products to Seller, F.O.B. Seller's desired facility, for inspection. Failure to give detailed written notice within the above referenced timeframe will constitute a waiver of any claim by Buyer. If returned Custom Products are deemed by Seller, in its sole discretion, to be defective or non-conforming, Seller will repair or replace such Custom Products, or refund the purchase price for same, at the sole discretion of Seller. No claim may be made after Custom Products are used, processed or changed in any manner from their original condition. All warranty cards and similar items must be properly packaged and included with the Custom Products and returned to Seller in the original packaging.

6. Backorders. If Seller is unable to immediately fill an entire order, Seller shall notify Buyer, and if Buyer so requests, Seller shall ship those Goods that are available and in stock as an accommodation to Buyer, and shall ship the balance of the Goods on backorder to Buyer upon availability.

7. Shipment. All shipping dates given by Seller are approximate. Seller shall not be liable for late shipments. Buyer shall not be entitled to chargebacks, reductions in price or other offsets as a result of late shipments or failure to deliver in the estimated time of delivery. Seller shall properly package the Goods being shipped, however, Seller shall not be responsible for Goods damaged in transit. Any and all claims for Goods damaged during transit/shipment are to be made by Buyer with the corresponding freight or shipping company. Any Goods not damaged and subject to any such claim shall be accepted by Buyer and paid for in full regardless of any claim in process or controversy relating to other damaged, delivered or undelivered Goods.

8. Taxes and Fees. Unless expressly stated and agreed in writing by Seller, quoted prices do not include shipping and handling charges, sales, use, excise, VAT or similar taxes, tariffs or duties. Buyer shall pay these taxes, tariffs and duties directly if the law permits, or shall reimburse Seller if Seller is required to collect and pay them.

9. Changes in Costs. Any change in insurance coverage costs, destination charges, or other shipping related charges, including fluctuations in freight fees, which may be established or incurred after the date of Seller's order acceptance, shall be at the expense of Buyer.

10. Limited Warranty. Except for Custom Products, as specified in Section 5, and clearance Goods, Seller warrants that all Goods manufactured by Seller will be free from material defects for a period of one (1) year, and will conform to stated specifications. If Buyer believes any Goods are materially defective or

non-conforming upon receipt, Buyer agrees to report same in writing and in detail to Seller within thirty (30) days after delivery of the Goods. If Buyer believes any Goods are materially defective or non-conforming within one (1) year of receipt, Buyer agrees to report same in writing and in detail to Seller within thirty (30) days after becoming aware of any such defect or non-conformance and, in any event, within one (1) year from the date of receipt of such Goods. Upon timely notice from Buyer, a RMA number will be issued by Seller. Buyer will then promptly return such Goods to Seller, F.O.B. Seller's desired facility, for inspection. Failure to give detailed written notice within the above referenced timeframes will constitute a waiver of any claims by Buyer. If returned Goods are deemed by Seller, in its sole discretion, to be materially defective or non-conforming, Seller will repair or replace such Goods, or refund the purchase price for same, at the sole discretion of Seller. No claim may be made after Goods are used, processed or changed in any manner from the original condition. All warranty cards and similar items must be properly packaged and included with the Goods and returned to Seller in the original packaging.

11. Returns Process. Seller offers a thirty (30) day return policy on all Goods other than Custom Products, to a maximum of Five Thousand Dollars (\$5,000 USD) in value per order. All non-defective returns are subject to a restocking fee equal to fifteen percent (15%) of the purchase price of the Goods. All shipping and handling fees associated with returns are the responsibility of Buyer and are non-refundable. All returned items must be in original condition with all original packing materials, including instructions and manuals, accompanied by sales invoice. Seller has no responsibility for lost, stolen, or damaged Goods of any kind. Seller strongly suggests sending all returned Goods with insurance and proof of delivery, or using a carrier that can provide a tracking number to protect Buyer's interest in the shipment. Buyer must notify Seller of any return request in writing within thirty (30) days of delivery and obtain an RMA number from Buyer. The RMA number must appear clearly on the shipping label

affixed on the outside of all return shipments. Please do not mark the original packaging in any way. Packages must be shipped to Seller, Indianapolis, Indiana with freight charges PREPAID.

12. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS LIMITED WARRANTY STATED ABOVE, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE GOODS, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of Liability. SELLER'S LIABILITY SHALL BE LIMITED TO THE COST OF REPAIRING OR REPLACING, AT SELLER'S OPTION, DULY REJECTED GOODS TO THE POINT OF DELIVERY AS SPECIFIED IN SELLER'S ORDER ACKNOWLEDGMENT WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF GOODS, DEFECTIVE GOODS, OR DELAY IN SHIPMENT, OR ANY OTHER BREACH BY SELLER.

14. Indemnification. Buyer shall indemnify, defend, and hold harmless Seller and all members, managers, officers, directors, employees, and affiliates of Seller, and all successors and assigns thereof, from and against any and all suits, investigations, claims, judgments, orders, damages, losses, expenses and fees, including, without limitation, third party claims and claims made by governmental authorities, and court costs and reasonable attorneys' fees and expenses resulting from, arising out of, relating to, in the nature of or caused by (a) the breach by Buyer of any

agreement, representation, warranty or covenant of contained herein or in any other transaction document related to these Standard Terms and Conditions of Sale, or (b) the alteration, modification or misuse of the Goods arising after shipment.

15. Shortage of Goods. A claimed shortage of Goods will not be effective unless it is made by Buyer, and detailed written notice thereof is given to Seller, within thirty (30) days after the Goods arrive at the destination specified in the Seller's order acknowledgment. Seller reserves the right to inspect any and all shipments to determine quantities shipped.

16. Failure to Take Delivery. If Buyer fails to take delivery of the Goods, or any part thereof, the Goods not delivered shall be held at Buyer's sole risk in all respects. Seller, acting as Buyer's agent and at Buyer's expense, may thereafter store, insure and/or otherwise protect such Goods or may resell same for Buyer's account. The delivery date(s) quoted are based on Seller's best estimate of a realistic time when delivery to the carrier will be made, and are subject to confirmation at time of acceptance of any resulting order. Seller reserves the right to make either early shipment or partial shipments, and invoice Buyer accordingly.

17. Title and Risk of Loss or Damage. Title, and all risk of loss and/or damage to Goods shall pass to Buyer when the Goods are made available to the freight carrier at Seller's facility.

18. Cancellation.

a. Seller Cancellation. Seller shall have the absolute right to cancel and refuse to complete any order for Goods without notice (i) at any time, if Buyer does not strictly comply with any of these Standard Terms and Conditions of Sale; (ii) in the event Buyer's financial condition or responsibility becomes unsatisfactory to Seller, in its sole discretion; or (iii) in the event of any inability of Seller to deliver Goods due to act of God, strike or other labor difficulties, fire, flood, delay or defaults of common carriers, U.S. or foreign government

intervention, trade restrictions and/or quotas, act of war or terrorism, or any other circumstance beyond Seller's reasonable control which delays or prevents delivery of the Goods, or any part thereof. In any such event, Seller, at Seller's option, may cancel any unshipped portion of Goods without liability by sending written notice to Buyer. If Seller so cancels any order, Seller shall have no liability whatsoever.

b. Buyer Cancellation. If Buyer cancels any order for Goods (other than Custom Products, which are subject to Section 5 hereof), prior to Seller's shipment of such Goods, Buyer shall be liable to Seller for any and all costs and expenses incurred by Seller as a result of such cancellation and Seller may retain all or any portion of any down payment or deposit paid by Buyer, in order to cover such Seller costs and expenses. Buyer shall also reimburse Seller for any and all additional actual out-of-pocket expenses and costs incurred by Seller with respect to any order cancellation (including orders for Custom Products), plus lost profits, and any other special or consequential damages incurred by Seller.

19. Default. If Buyer breaches or is otherwise in default under these Standard Terms and Conditions of Sale or under any other contract between the parties hereto, then, in addition to all other remedies available to Seller at law and in equity, Seller, at its sole option, may delay delivery of any undelivered Goods until any such default is cured, or may treat the default as a repudiation by Buyer of any outstanding order in its entirety, and may resell any special ordered Goods or Custom Products and hold Buyer liable for such damages as Seller may incur, including reasonable attorneys' fees and costs, consequential and incidental damages. For purposes hereof, Buyer's insolvency shall be a default. If Seller elects to resell special ordered or custom Goods, Seller may sell all or part of the Goods, without notice to Buyer except as may be required by law (and in such event five (5) days' notice is acknowledged and agreed reasonable notice), at a public or private sale, and Buyer shall be liable for any damages resulting by reason of Buyer's default. Seller shall not be

limited in its rights and remedies against Buyer for any cause whatsoever to those remedies set forth herein, but shall have all such other rights and remedies as may be available to it under the Uniform Commercial Code, Ind. Code § 26-1 et seq., as amended, or any other applicable law.

20. Seller's Lien. Until the unpaid order price and any other amounts payable by Buyer to Seller under the order acknowledgment are paid in full, Seller shall have a lien on the Goods for any unpaid amounts. Buyer hereby grants to Seller a security interest in the Goods to secure payment of such amounts.

21. Professional Racing Goods. Buyer acknowledges and agrees that all Goods sold by Seller are designed solely for use on a professional race course by a properly trained and experienced professional race car driver, and NOT for commercial or private use of any kind. All Goods have been designed and are intended solely for off-highway professional motorsports application. Federal and/or state laws may prohibit the use of any of the Goods in or on a vehicle used on public highways. Any such unauthorized installation or use of Goods on commercial or private vehicles may also void the warranty coverage, if any, on the vehicle. Vehicles modified by use of Goods may no longer be lawfully used on public highways, and it is the sole responsibility of Buyer to understand, and comply with, any and all laws and regulations applicable to the use of all Goods.

22. Authority of Seller's Agents. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the Goods. Unless an affirmation, representation or warranty is specifically included within these Standard Terms and Conditions of Sale, it has not become a part of any agreement between the parties and shall not be in any way enforceable.

23. Force Majeure. Seller shall be free from any liability for delay or failure in shipment arising from any act of God, strike or other labor difficulties, fire, flood, delay or defaults of

common carriers, U.S. or foreign government intervention, trade restrictions and/or quotas, act of war or terrorism, or any other circumstance beyond Seller's reasonable control which delays or prevents delivery of the Goods, or any part thereof, including matters existing on the date of order acceptance/acknowledgment. In such a situation, if shipment or delivery is not made during the period contracted for, Buyer shall accept delivery under the order acknowledgment when shipment is made; provided, however, Buyer shall not be obligated to accept delivery if shipment is not made within a reasonable time after the cessation of the aforementioned impediments or causes.

24. Entire Agreement; Amendment. The Seller's order acknowledgment and these Standard Terms and Conditions of Sale supersede all prior negotiations, representations, agreements, quotes and catalogues, whether written or oral, may not be modified by any prior or subsequent terms and conditions tendered by Buyer, and may not be modified, supplemented or interpreted by evidence of course of dealing, course of performance or usage of trade. To the extent the provisions hereof conflict with any prior or subsequent agreement of the parties, these Standard Terms and Conditions of Sale will control. These Standard Terms and Conditions of Sale may not be modified or rescinded except by express written agreement signed by both parties.

25. Waiver. Except as may be expressly provided in a writing signed by the parties to this Agreement, the failure or delay of either party to this Agreement to insist in any instance on strict performance of any provision of this Agreement shall not be construed as a waiver of that provision or the relinquishment of any rights under that provision in the future, but the provision shall continue and remain in full force and effect.

26. Assignment. Buyer acknowledges that no purchase order or order acknowledgement, nor the obligations represented thereby, may be assigned or delegated, in whole or in part by Buyer, without the prior written consent of Seller. Any

attempted assignment without such consent shall be wholly void and ineffective for all purposes. Buyer's unauthorized attempt to assign or delegate any rights or obligations shall serve as grounds for termination of the order.

27. Severability. The parties agree that each and every paragraph, sentence, clause, term and provision of these Standard Terms and Conditions of Sale is severable and that, in the event any portion hereof is adjudged to be invalid or unenforceable, the remaining portions shall remain in full force and effect to the fullest extent permitted by law.

28. Governing Law; Venue. All matters involving the validity, interpretation and application of these Standard Terms and Conditions of Sale will be controlled by the laws of the State of Indiana, and Buyer and Seller hereby irrevocably consent to the jurisdiction of the state and federal courts located in Marion County, Indiana for the resolution of any disputes arising hereunder. Buyer and Seller irrevocably waive any defense or objection it may now or hereafter have based on *forum non conveniens* and waive any objection to venue of any action instituted hereunder.