



Rose Electronics
2030 Ringwood Ave.
San Jose, CA 95131
www.rosebatteries.com

Rose Electronics Distributing Company, LLC/Energy Sales, LLC
Terms and Conditions of Quotations, Acceptances of Orders, and Sales

1. **QUOTATIONS.** The acceptance of all orders and all sales by Rose Electronics Distributing Co LLC/Energy Sales LLC ("Seller") are made subject to and expressly conditional upon the Terms and Conditions of Quotations, Acceptances of Orders and Sales ("Terms and Conditions") contained in this document.
2. **APPLICABLE TO ALL ACCEPTANCES OF ORDERS BY SELLER.** Unless Buyer assents to all Terms and Conditions, this section shall be deemed a rejection of Buyer's offer and our acknowledgement of your purchase order, agreement to ship or shipment of any products to you shall not be an acceptance of any terms and conditions not set forth herein and shall constitute a counteroffer. Buyer may accept the counter offer only on these Terms and Conditions. Terms in Buyer's acceptance that are additional to or not identical to these Terms and Conditions will not become part of the contract without Seller's express written consent.
3. **APPLICABLE TO ALL QUOTATIONS BY SELLER.** Prices quoted are valid for thirty (30) days only. Clerical errors are subject to correction. Acceptance of the offer represented by this quote is expressly limited to the provisions herein. Signing and returning the acknowledgment copy of this quote or, in any event, acceptance in whole or in part of the articles to be presented hereunder shall constitute acceptance of this offer. No additional or different terms in Buyer's purchase order or other communication shall constitute a part of the quotation unless expressly agreed to in writing by Seller.
4. **PRICING.** Price is that which is in effect at the time of shipping. Prices are subject to Manufacturer's increase for deliveries scheduled beyond 90 days. If Buyer requests changes to the quantity, type or timing of products to be released for shipment, Seller will attempt to comply when possible, but reserves the right to adjust the price for those products. On all custom battery pack assemblies, Seller may charge a non-recurring engineering fee for development costs on new projects or changes to existing projects. All prices are exclusive of all present or future federal, state and local excise, sales, use, value added, and similar taxes/fees. These taxes/fees shall be paid by Buyer, unless Buyer provides Seller with a tax exemption certificate that Seller, in its sole and absolute discretion, finds acceptable.
5. **PAYMENT.** Unless Seller has extended credit to Buyer. Buyer shall pay Seller, at Seller's option, either by: Cash with Order, Credit Card, Letter of Credit, Wire Transfer, or Sight Draft. Should Seller elect to extend credit to Buyer, the terms shall be net thirty (30) days from invoice date and delinquent balances will be subject to carry charges at the maximum rate permitted by law. Seller reserves the right at any time to change the amount of or to withdraw any credit extended to Buyer. Any delay in conducting receiving inspection shall not cause delay in payment. Each shipment shall be considered a separate and independent transaction and payment therefore shall be due accordingly. Buyer shall be liable for all collection costs (including attorney's fees) incurred by Seller in connection with past due payments.
6. **TITLE AND DELIVERY.** Seller shall deliver products to Buyer F.O.B. Point of Shipment. All shipping charges and expenses shall be paid by Buyer. Delivery of goods to common carrier or licensed trucker shall



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constitute delivery to buyer, and all risks of loss or changes in transit shall be borne by the buyer. Seller reserves the right to make partial delivery or delivery in installments unless otherwise specifically agreed to in writing. All such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery at any installment shall not relieve the buyer of its obligation to accept remaining deliveries.

7. DELAYS. Seller will not be liable for any delay in the performance of its obligations under the Sales Order, or any damages suffered by Buyer due to such delay, if the delay is, directly or indirectly, caused by a fire, flood, accident, civil unrest, act of God, war, governmental interference or embargo, labor strike, pandemic, shortage of materials, or any other cause beyond Seller's control.

8. HELD, DELAYED, CANCELLED OR RESCHEDULED ORDERS. Seller requires thirty (30) days notice for any changes to scheduled shipments, which changes are subject to Seller's approval. Adjustments in delivery schedule will be accommodated as permitted by part availability. However, if additional costs are incurred from pulling in or pushing out a delivery, a corresponding fee will be charged. If an order is decreased such that the total quantity shipped falls into a different price category, a price difference charge will be issued. All cancellations and returns are subject to Seller's **approval and a fee**. Any orders held, delayed, canceled or rescheduled at the request or due to the action of the Buyer will be subject to the prices and conditions of sale in effect at the time of release of the hold or reschedule, plus any additional costs incurred due to the hold, delay or reschedule. In the case of such a hold, delay, cancellation or reschedule due to the action or request of the Buyer, Seller reserves the right to invoice Buyer on the date shipment was originally scheduled, for the reasonable stocking fees and the full sales price of any such product, which payment shall be due from Buyer within 30 days of invoice.

9. EQUIPMENT. Any equipment and tools that Seller constructs or acquires for Buyer's order shall be and remain Seller's property and in Seller's possession and control, and any amounts paid in connection therewith by the Buyer shall be considered a service charge. New or additional equipment and tools, and changes thereto which become necessary to conform to changes in design ordered by the Buyer are to be paid for by the Buyer. Any materials owned or furnished by Buyer while in Seller's possession will be carefully handled and stored by Seller, but Seller shall have no responsibility for loss or damage thereto.

10. WARRANTIES AND REMEDIES.

(A) Unless otherwise specified in writing by Seller, Seller warrants to Buyer that its products shall be free from defects in material and workmanship and shall conform with any written mutually agreed upon specification for a period of one (1) year from the date of shipment, provided, however, that the warranty is void if the products are not stored, installed, operated and maintained and applied in accordance with recommendations and standard battery industry practice. Damage due to misuse, negligence or accident is not covered under this warranty. Product samples are sold "AS IS", "WITH ALL FAULTS", and with no warranty. Seller specifically does not warrant the results of third party testing, including, without limitation, UL testing, transportation testing, or any other testing, whether or not Seller ordered and/or paid for such testing on behalf of Buyer. The warranties herein shall apply only to Buyer and shall not extend to Buyer's customers



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or any other third parties. Seller expressly disclaims all other warranties of any kind, express or implied, orally or in writing, including without limitation any warranty of merchantability, fitness for a particular purpose, satisfactory quality or arising from a course of dealing, title, usage or trade practice. Liability for consequential or incidental damages under any and all warranties are excluded to the extent exclusion is permitted by law.

(B) If the products sold hereunder fail to meet the above warranty, Seller, at its sole option, will repair or replace such defective product(s) or issue Buyer a credit or a refund in the amount of the purchase price for the defective product(s) ("Exclusive Remedy") provided that:

(1) Seller is notified in writing by Buyer within the warranty period, and within 30 days after discovery of such failure, of the nature of the failure and the specific units effected,

(2) Buyer obtains a Return Material Authorization Form ("RMA") from Seller to return the quantity required to test and examine to establish the existence of and reason for any failure, at which time Seller will determine whether the balance of the effected units may be returned using a RMA,

(3) the defective products are returned to the location specified by Seller and are received by Seller within 30 days of the expiry of the warranty period; and

(4) Seller determines, in its sole and absolute discretion, upon examination of such products that such failures have not been caused by improper installation, application, charging, repair, alteration, accident or negligence.

(C) The Exclusive Remedy is the Buyer's exclusive remedy for claims based on defects in or failure of any products whether a claim is based in contract, tort (including negligence and strict liability), warranty or otherwise and however instituted. Upon the expiration of the applicable warranty for any products, all such liability shall terminate. No claim or action arising out of Buyer's order or other document pertaining to the goods, whether in contract, tort or otherwise, may be brought by Buyer more than twelve (12) months after the date of shipment of the goods. Except as expressly set forth above, Seller products are provided "as is" and "with all faults."

11. GENERAL LIMITATIONS OF LIABILITY. Notwithstanding any other provision of these Terms and Conditions, in no event shall Seller be liable under any claim, demand or action (whether in contract, tort, or otherwise) arising out of or relating to Seller's products or services for any special, indirect, incidental, exemplary, or consequential damages, including, but not limited to, loss of anticipated profits, loss of use, or loss from business disruption, regardless of whether or not Seller, its employees or agents have been advised of the possibility or likelihood of such damages. Seller shall not be liable for any loss or damages resulting from any shipping delay, whether or not Seller agrees to a specific shipping date. Seller's total liability for damages arising out of or in connection with Buyer's purchase of Seller's products, whether in contract, tort, or otherwise, shall in no event exceed the purchase price paid as to the specific order to which the claim relates.

12. INDEMNITIES.



(A) Buyer shall indemnify, defend and hold Seller and its directors, officers, employees, and subcontractors (each an "indemnified party") harmless from all liabilities, costs and expenses arising out of or related to any of the following:

1) any suit or proceeding based upon a claim that products infringe upon the right of a third party to the extent such claim arises from Seller's compliance with Buyer's designs, specifications or instructions;

2) any suit or proceeding based upon a claim asserted by a third party that relate to a) the design, testing, or data provided by Seller or its subcontractors to Buyer, b) the manufacture, marketing, or sale of the products or services, or c) that otherwise relate to the products or services provided to Buyer, unless caused by an indemnified party's sole negligence. If an indemnified party becomes subject to a third party claim, such indemnified party may, with Buyer's consent which shall not be unreasonably withheld or delayed, defend itself at Buyer's expense with counsel of its own choosing.

(B) Seller's products and services are not designed, intended, or authorized for use in relation to any nuclear, life saving or life sustaining systems, or for any other application in which the use of the products or services could create a situation where personal injury or death may occur. Should Buyer use Seller's products or services for any such unintended or unauthorized use, Buyer shall indemnify and hold Seller and its officers, subsidiaries and affiliates harmless against all claims, costs, damages, and expenses, and reasonable attorney fees arising out of, directly or indirectly, any claim of product liability, personal injury or death associated with such unintended or unauthorized use, even if such claim alleges that Seller was negligent regarding the design or manufacture of the Seller's products.

(C) Release and waiver. To the extent permitted by law, Buyer waives and releases Seller and its directors, officers, employees and subcontractors from all liability, claims, demands, actions, or causes of action for any alleged loss, damage, or injury, other than a claim for repair of, replacement of, or credit for the product in question, at Seller's option, as described above. This release and waiver covers all claims arising in tort as well as those arising under any state or federal statute that in any way arise out of, or relate to, the products or services or performance or alleged non-performance under any agreement.

13. PATENTS. Seller shall have no liability to Buyer if any patent infringement or claim is based upon (i) custom products made for the Buyer according to the Buyer's design, (ii) a modification of the products not approved by Seller, (iii) the interconnection or use of the products in combination with other products or devices not made by Seller, or (iv) the use of products in other than an application recommended by Seller. The above states Seller's sole liability for infringement of patents by its products.

14. U.S. GOVERNMENT CONTRACTS. If the products are to be used in the performance of a U.S. Government contract or subcontract, no Government requirements or regulations shall be binding upon Seller unless specifically agreed to in writing.



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15. MISCELLANEOUS.

(A) The invalidity, in whole or in part, of any provision herein shall not affect validity of any other provision herein.

(B) No modification, rescission, waiver or other change in these Terms and Conditions shall be binding on Seller unless assented to in writing by its authorized representative.

(C) Any errors or omissions in any Rose Batteries quotation, acceptance, specification or other document shall be subject to correction at Rose Batteries' discretion.

(D) The rights and obligations of the parties under these Terms and Conditions shall be governed by the substantive laws of the State of California without reference to its conflict of law provisions. The parties hereby irrevocably agree that venue as to any dispute and personal jurisdiction of the parties to such dispute shall be solely and exclusively in the State of California, Courts of the County of Santa Clara, or if applicable, in the Federal District Court for the Northern District of California, located in San Francisco County, California

16. ENTIRE AGREEMENT. This agreement is intended by the parties as a final expression of the terms and conditions of the Sales Order. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. The Agreement can only be modified in writing, signed by both parties. No previous course of dealing between the parties or trade usage may be used to interpret, limit, or otherwise impair the operation of this Agreement.