



## JOHANSON DIELECTRICS - TERMS & CONDITIONS

**1. ACCEPTANCE OF ORDER.** The specifications on the face hereof together with the following terms and conditions, constitute the entire Agreement between Seller and Buyer. These terms and conditions ("Terms") shall be binding for any order ("Order") placed by Buyer. Any objection to any item herein, including provisions which are in addition to or different from those contained in these Terms, must be in writing and shall not be deemed timely unless received by Seller within seven (7) days from the date of delivery of these Terms. If Buyer makes a timely objection to any term herein, Seller shall have the right to either accept in writing such objection or withdraw its acceptance of this Order. Buyer's failure to object as specified will be deemed conclusive acceptance of all of these Terms. No acceptance by Seller of any Order shall be deemed to be an acceptance of any provision of Buyer's purchase order form. If any terms on the face of Seller's Purchase Order, Invoice or Order Confirmation differ from or add to these printed terms, the face terms on such Seller's Purchase Order, Invoice or Order Confirmation shall take precedence over these printed Terms. Any purchase order or other written form of Buyer shall be construed as an offer and shall not become an effective binding part of these Terms, unless signed in advance by an authorized officer of Seller, together with a written agreement that it is incorporated into these Terms. Any alteration, variance or waiver of these Terms requires the prior written approval of an authorized officer of Seller.

**2. PRICES AND TERMS.** Price, terms and availability of merchandise are subject to change without notice, including, but not limited to, changes caused by fluctuations in market price, and availability and quality of precious metals and other materials employed in the manufacture of the product. Prices quoted by Seller are valid for thirty (30) days from date of quotation or as otherwise extended in writing by Seller, and must be accepted in writing within this time. After expiration of this period, Seller may, at its discretion, extend time of quotation or make a revised quotation. Seller reserves the right to correct clerical or typographical errors at any time, even after acceptance. Unless otherwise specified in writing, all prices are in United States dollars ("USD") and do not include any applicable Federal, State and local taxes, valued added taxes, excise taxes, use taxes, customs and import duties, fees, costs, and expenses.

Unless otherwise provided on a Seller Purchase Order or expressly agreed to by a signed writing of Buyer and Seller, payment hereunder shall be due net thirty (30) days from the date of shipment. All amounts past due shall bear interest at the rate of 1.5% per month or at the maximum rate allowable by California law, whichever is lower and without formal notice. Payment of such interest does not

release Buyer from its obligation to make payments on the agreed dates. Payment shall be made if unimportant parts are missing, which do not prevent the product from being used, or if subsequent work on the product is found to be necessary. Seller's obligation to produce or deliver hereunder is conditioned upon continued good credit of Buyer and upon Buyer's payment when due of any sum owing by Buyer to Seller under any agreement between the parties. If Buyer's financial condition at the time the merchandise is ready for shipment does not justify the terms specified, in Seller's sole discretion, the Seller reserves the right to change these terms, to require full or partial payment in advance, or to ship the goods C.O.D. (or any combination thereof) Buyer shall not, at any time, be entitled to set off any amount owed by Seller to Buyer against any amount payable by Buyer to Seller.

In order that Seller may make a reasonable determination as to the financial health and creditworthiness of Buyer, upon Seller's request at any time, Buyer shall provide such financial information as Seller shall reasonably request, which information Seller shall not disclose to any third party other than its advisors who need to see such information in order to advise Seller as to Buyer's financial health.

**3. TAXES.** Any taxes which Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the material covered hereby, including taxes upon or measured by the gross receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand.

**4. SHIPMENTS.** FOB Seller Camarillo Facility. Seller shall arrange delivery with a common carrier ("Shipper") but Buyer shall be solely responsible for all costs and expenses of delivery from Seller's shipping point. "F.O.B." means that title and right of possession passes upon delivery to Shipper or payment in full (including any deferred payments and interest charges) to Seller, whichever occurs last. Shipment and/or delivery dates are quoted based on conditions prevailing on the date of quotation and subject to factory schedules and production limitations. All Orders, including custom product Orders, are subject to reasonable rescheduling of the delivery date and failure of Seller to deliver by the original delivery date shall not be deemed a breach of these Terms. The time of delivery shall be deemed to have been complied with when the product has been shipped or delivered into the custody of the Shipper at the designated site before expiration of the time of delivery. If delivery is delayed by Buyer, product held for Buyer shall be subject to storage charges and shall be at the sole risk and expense of Buyer. Seller need not ship or deliver as quoted if Buyer has not met its payment or other contractual obligations.

To the extent that Buyer has provided packing specifications to Seller, Seller will comply with such specifications. Seller is not responsible for any loss, cost or expense for damages goods

as a result of the manner of packing except to the extent that Seller failed to comply with Buyer's specifications. To the extent that Buyer has provided containers for packing the goods and has made them available for use, Seller will use such containers. Seller is not responsible for any loss, cost, or expense associated with the use or handling of such containers.

**5. DELIVERY IN INSTALLMENTS.** Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for remaining deliveries.

**6. DELAY IN PERFORMANCE.** Seller shall not be liable for delays in performance due to acts of God, changes in local, State, or Federal laws or regulations, fire, flood or other casualty, accident, epidemics, quarantines, terrorism, strikes, riot or other civil unrest, war, acts of violence, trade embargoes, shortage of labor or materials, delays in transportation, governmental action, etc. or other cause beyond Seller's control or due to acts of Buyer; and the time for Seller's performance shall be extended by the period of any such delay. In no event shall Buyer be entitled to any damages as a result of delays in delivery or late delivery. Seller reserves the right to apportion its production among its customers as it may determine.

**7. SPECIALLY MANUFACTURED GOODS.** On any Order of specially manufactured goods, an overrun or underrun of 5% of the quantities specified shall be considered fulfillment of such Order. Buyer shall pay in accordance with the units shipped.

**8. LIMITED WARRANTY.** Seller warrants to Buyer that the goods shall be free from defects in material and workmanship for a period of ninety (90) calendar days from the date of shipment of the goods to Buyer during normal use and service. Seller warrants only that the goods will conform to the applicable specifications approved in advance in writing by an authorized officer of Seller or otherwise listed in Seller's catalogs and/or other sales material applicable to this Order; provided, however, that (i) between the date of shipment and the date of first use, the goods are stored and maintained in "as shipped" condition by Buyer and (ii) the goods have been installed, used and maintained according to Seller's instructions and guidelines, if any. The product shall not be deemed defective by reason of normal wear and tear and this limited warranty shall not apply to (i) product where the product has been subjected to mishandling, misuse, abuse, alteration, damage, neglect, or improper or inadequate storage, maintenance, repair or installation, (ii) damage due to operation of the product other than as per the specifications, or use with other components, materials or equipment, (iii) any defect, malfunction or failure caused by accidents, misuse, abuse, unauthorized repair, or use of the product with components or equipment for which it is not intended, (iv) any act of God (such as floods, hurricanes, earthquakes or fires, etc.) or (v) any uses of the goods as a substitute for another manufacturer's goods unless such substitution has been specifically approved in writing by an authorized officer of Seller. There are no warranties which

extend beyond the description on the face hereof. It is expressly understood that any technical or other advice furnished by Seller or its agents with reference to the use of the goods is not part of this limited warranty, all such advice is being given and accepted at Buyer's sole risk. No agent, employee, or representative of the Seller has any authority to bind Seller to any affirmation, representation or warranty concerning the goods unless set forth in writing in these Terms.

No other express warranty is given and no affirmation of Seller, by words or action, will constitute a warranty. **THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY WAIVED TO THE FULLEST EXTENT PERMITTED BY LAW.** Buyer assumes all risk and liability for results obtained in use of the goods, whether singly or in combination with other products.

**9. INSPECTION.** Prior to shipment, Buyer shall have the right and shall be given the opportunity to inspect the goods at the Seller's place of manufacture if Seller is provided ten (10) days advance written notice. Such inspection shall be conducted so as not to interfere unreasonably with the Seller's operations, and consequent approval or rejection of product shall be made before shipment of the material. Notwithstanding the foregoing, if, upon receipt of such material by Buyer the same shall appear to be defective, Buyer shall notify Seller, in writing, within thirty-five (35) days from date of shipment of the goods of such defective condition. Failure to give notice within the time specified shall constitute an irrevocable acceptance of the goods. Claims for shipment defects, damages or shortages shall be waived unless made within ten (10) days of receipt of the product by Buyer. No claims, of any kind, by Buyer shall be valid without written notice.

**10. REMEDY FOR NON-CONFORMING GOODS.** Buyer shall report any claimed defect in writing to Seller upon discovery and in any event, within the warranty period. Buyer shall afford Seller a reasonable opportunity to inspect the product. If the product furnished to Buyer shall be found to be defective (as determined by Seller), Seller, at its sole discretion, shall within thirty (30) days of notice of said non-conformity, issue credit for or shall replace such non-conforming product at the original point of delivery and shall furnish instructions for the disposition of the non-conforming product. No product shall be returned without Seller's prior written consent. If Buyer repairs or replaces product without Seller's prior written approval, Seller is relieved of any obligation to Buyer under these Terms to issue credit or replace such product. Buyer shall be responsible for any shipping charges for replacement product from the original point of delivery (Camarillo Facility) to the destination point of Buyer. Any transportation or shipping charges incurred by Buyer in disposition of the non-conforming goods shall be at Seller's expense. Buyer's exclusive and sole remedy for non-conforming goods, or any warranty claim, shall be to secure credit or replacement thereof as set forth herein. Seller shall not, in any event, be liable for the cost

of any labor expended on any such goods or for any special, direct, indirect, incidental or consequential damages. No claim of any kind will be considered on product or materials, which have been converted, changed, processed or used in manufacture.

**11. PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES.** Except for written specifications of Buyer which are expressly agreed to in writing by an authorized officer of Seller in advance, products ordered shall be produced in accordance with Seller's standard practices. Notwithstanding the above, all products shall be produced subject to Seller's tolerances and variation in respect to dimension, weight, surface conditions, composition, mechanical properties, internal conditions and quantity; to deviations from tolerances and variations consistent with practical testing and inspection methods; and to Seller's customary practice on over and under shipments. Notwithstanding anything herein to the contrary, Seller may, without Buyer's approval, also make revisions to the products that do not affect form, fit or function. All representations, warranties, and certifications on the part of Seller with reference to such products shall be limited by the foregoing.

**12. SPECIFICATION CHANGES.** Specification changes by Buyer are subject to prior acceptance in writing by an authorized officer of Seller, and such changes shall include price revisions for any resulting increase in Seller's cost or time for performance and any adjustments necessary to cover material procured and processed and labor expended by Seller prior to actual receipt by Seller of such revised specifications.

**13. GOVERNING LAW.** This agreement is entered into in Los Angeles County, California and shall in all respects be construed and governed by the laws of the State of California applicable to agreements entered into and to be wholly performed in such state without regards to its principles of conflicts of laws. Buyer and Seller agree and accept that any legal action or proceeding with respect to this agreement shall be exclusively brought in the Federal or state courts for the State of California, County of Los Angeles, and the parties expressly waive any objection to personal jurisdiction, venue or forum non conveniens. Buyer agrees to materially comply with the applicable provisions of all federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder with regard to the product sold hereunder. Seller and Buyer agree not to commence any action, suit or proceeding in any other court.

**14. NON-WAIVER.** The failure of Seller at any time to require performance by Buyer or make any election under any provision of these Terms shall in no way affect Seller's right to require such performance or make such election at any time thereafter, nor shall waiver by Seller of the breach of these Terms be construed as a waiver of any other breach.

**15. TITLE, RISK OF LOSS AND INSURANCE.** Identification of the goods sold herein occurs when Seller places said goods in the hands of the Shipper for delivery. Buyer bears the risk of loss or damage to the product from the time that Seller delivers to Shipper and during all transportation and delivery of the product to the site designated by Buyer. Buyer agrees to obtain at its sole cost "all risk" insurance to cover full value of the product and shall be solely responsible for damage, fire, theft or other casualty loss, and negligence of Buyer's agents, servants or employees (i) during shipment of the product, (ii) for product held by Seller in storage prior to shipment if shipment is delayed by Buyer and (iii) product in the care, custody and control of Buyer until title has passed to Buyer. Seller shall be named as loss payee and additional insured with respect to casualty loss, to the extent of Seller's interest in the product. Buyer shall provide Seller with a Certificate of Insurance upon request. Buyer agrees to perform all acts necessary to protect and maintain this title and right. Passage or non-passage of title shall not affect risk of loss. This agreement allocates the risks between Seller and Buyer. This allocation is recognized by both parties and is reflected in the price of the product.

**16. INDEMNIFICATION.** Buyer agrees to indemnify, defend and hold harmless Seller and its officers, directors, shareholders, employees, independent contractors, agents, representatives, attorneys, successors and assigns (collectively, "Seller Indemnitees"), from any and all actions, causes of action, claims, demands, losses, obligations, liabilities, damages (including incidental, special, punitive and consequential damages), recoveries, settlements, deficiencies, costs and expenses (including, without limitation, interest, penalties, accounting fees, attorneys' fees and expert witness fees) incurred by Seller Indemnitees, known or unknown, contingent or otherwise, against Seller Indemnitees, or any of them, directly or indirectly related to or arising from any of the following: (a) these Terms; (b) possession or use of the product by Buyer or any third party (or both) including without limitation any personal injury or property damage; (c) any alteration, change or mishandling of the product by Buyer or any customer of Buyer (or both); or (d) infringement or misappropriation of any third party intellectual property, patent, copyright, trade secret, or other proprietary right (whether common law or statutory) as a result of the manufacture or use (or both) of the product. This indemnity will survive the termination or expiration of these Terms. This indemnity will not apply to any such loss, claim or damage caused solely by the intentional misconduct of Seller.

**17. CANCELLATION AND TERMINATION.** Buyer may cancel any Order, provided written notice is received by Seller thirty (30) days prior to shipment of the goods and agreed to in writing by Seller except that on scheduled Orders, the terms of the applicable Purchase Order control all cancellations. Notwithstanding anything in these Terms or any Purchase Order to the contrary, Buyer shall be liable for the payment of reasonable cancellation charges, which shall include, but not be limited to, expenses already incurred by Seller and reasonable indirect charges and expenses (including a reasonable profit for work performed to date of termination). Seller may

terminate any Order or work under any Order in whole or in part (i) immediately by written notice if Buyer commits a material breach of any one or more of its terms, or (ii) upon five (5) days advance written notice if Buyer becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors.

**18. ATTORNEYS FEES.** In the event of a claim, suit or controversy, including without limitation, a suit to collect payment or an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to, phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees to be fixed by the court. The court shall determine the party that is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. Such recovery shall include court costs, out-of-pocket expenses and attorneys' fees on appeal, if any.

**19. ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY.** These Terms and the Seller's Purchase Order, Order Confirmation, Invoice or other order confirmations of Seller under which they have been deemed applicable, contain the entire agreement with respect to the subject matter hereof, and supersede all prior and contemporaneous communications, understandings and agreements of Buyer and Seller (either verbal or written). These Terms and accompanying Order may not be modified or amended in any way, either oral or written, unless such modification or amendment is in writing and signed by an authorized officer of each of Seller and Buyer. The invalidity of any provision of these Terms will not affect the validity of any other provision all of which shall remain in full force and effect. The parties agree to execute any further documents and take any further actions necessary in order to effectuate the purpose of these Terms.

**20. LIMITATION OF ALL REMEDIES.** In no event will Seller be liable for any special, incidental, punitive, indirect or consequential damages based on breach of warranty, breach of contract, negligence, strict liability, tort, product liability, loss of profits; loss of savings or revenue; loss of use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities or services; downtime; claims of third parties; injury to persons or property; interruption of business; damages due to delays; costs resulting from the incorporation of the defective products into other products; defect investigations; business goodwill; extra work; or any other legal theory to the fullest extent permitted by law, even if Seller has been advised of the possibility of such damages. Buyer expressly agrees that Seller's sole maximum liability for damages for any cause whatsoever shall be limited to the total price received by Seller for the product and when Buyer accepts the product, Buyer is precluded from seeking any other damages against Seller.

**21. CONFIDENTIALITY; PROPRIETARY INFORMATION.** Unless otherwise expressly agreed in a contemporaneous or subsequent writing to the contrary, all drawings, documents, designs,

specifications, information, data, prototypes, samples, software and other items supplied or disclosed by either party in performance of this Order shall be the confidential and proprietary information of Seller. Buyer shall hold all such information in confidence and use it solely as strictly necessary to utilize the product and shall not use for any other purpose, and shall not reproduce, distribute or disclose such confidential information to any third party without Seller's prior written consent, and shall only disclose such confidential information to employees and independent contractors who may require use of such confidential information in the performance of their duties but only if such employees and independent contractors agree to keep such information confidential and are bound by confidentiality obligations at least as strict as set forth in this paragraph. Any non-disclosure agreement signed by the parties is hereby incorporated by reference and made a part of these Terms. The confidentiality obligations of Buyer survive termination or expiration of these Terms.

**22. RELATIONSHIP OF PARTIES.** Seller and Buyer are independent contracting parties and nothing in these Terms shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**23. LANGUAGE.** The parties acknowledge that it is their wish that these Terms and all documents and agreements relating thereto be in the English language only. In the event of any conflict between an English language version and a version in another language, the English language version shall control.

**24. SECURITY INTEREST.** Until the goods are fully paid for by Buyer, Buyer hereby grants Seller a purchase money security interest in goods sold to Buyer as well as all products and proceeds arising from the sale of such goods. Buyer hereby authorizes Seller to file financing statements, send notices to third parties and take such other steps as are necessary or desirable in order for Seller to perfect and maintain the first priority of its security interest.

Contact Information

**Please do not hesitate to contact us at:**

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