

EXCEPT TO THE EXTENT THAT THE FEDERAL ARBITRATION ACT APPLIES, THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO CHAPTER 48 OF TITLE 15 OF THE CODE OF LAWS OF SOUTH CAROLINA

## TERMS AND CONDITIONS OF SALE

The sale of YAGEO Nexensos brand products ("Products") from KEMET ELECTRONICS CORPORATION (hereinafter referred to as "Seller") to buyer ("Buyer") will be governed by the terms and conditions in any written contract expressly signed by an authorized officer of Seller which is currently in effect between Buyer and Seller covering such sale and all other terms contained herein which are not inconsistent with such contract. To the extent that the terms and conditions of such written contract are silent with respect to any matter addressed herein, these terms and conditions will govern. If there is no such written contract, then Seller will sell such Products to Buyer only upon the terms set forth herein.

**1. Price.** (a) The purchase price for the Products sold hereunder will be Seller's applicable prices in effect at the time of shipment. Prices in effect as of this date for the specific Products governed hereby are set forth on the attached quotation form. Seller has the absolute right to alter its prices and the terms and conditions of sale at any time for any reason upon thirty (30) days' prior notice in writing or by telecommunication. All freight, storage, handling, packaging, insurance, taxes, duties and other charges relating to the Products so sold will be arranged for the account of Buyer without any liability to Seller.

(b) Buyer will pay Seller the amount of all taxes, excises or other charges (except taxes on or measured by net income) that Seller may be required to pay to any government (foreign, national, state or local) with respect to the production, sale or transportation of any Products delivered hereunder, except where the law expressly provides otherwise.

**2. Minimum Order.** Minimum order will be \$1,500 per order.

**3. Rescheduling; Cancellation.** Standard Products may be cancelled, with advance written notice, no less than the number of days of the Product's lead time prior to the scheduled ship date from the manufacturing plant. Standard Products may be rescheduled, with advance written notice, no less than thirty (30) days prior to the scheduled ship date from the manufacturing plant. If the Product is in transit from Seller's manufacturing plant or already located at a warehouse, then Buyer's ability to cancel or reschedule may be disallowed. Non-standard "Z" classification Products are non-cancellable and non-returnable, and may not be rescheduled.

**4. Payment.** Satisfactory payment in full of all of Seller's invoices rendered hereunder must be made within thirty (30) days from the date of the invoice. In the event Buyer fails to make any payment pursuant to this or any other agreement between the parties hereto, or in case Seller has any doubt for any reason at any time as to Buyer's financial responsibility, Seller may immediately suspend and or decline to make any further deliveries of Products to Buyer except for cash, whether or not orders have already been accepted by Seller and Seller may demand immediate payment in full for all goods theretofore delivered. Buyer agrees to indemnify Seller and to hold it harmless from any and all claims and costs of any kind, including but not limited to, legal fees and costs which may be required to collect any overdue balances and interest on all overdue accounts will be at the rate lawfully charged at the time by Seller.

**5. Shipments; Delivery.** Seller will diligently endeavor to fill and ship all orders to Buyer at the requested time of delivery, subject to Buyer's choice of transport. Nevertheless, Seller will not be liable for any delay in delivery of the Products howsoever caused. Delivery of the Products sold by Seller hereunder will be made and title and all risks of loss thereto will pass to Buyer immediately upon the loading of the Products on the transport carrier at Seller's warehouse. Delivery of the Products sold by Seller hereunder will be made according to the following terms: FCA Point of Shipment (Incoterms 2020) for North American locations; DDP Customer Location (Incoterms 2020) for European Union locations; DDP Hong Kong (Incoterms 2020) for all Asian locations. Products will be deemed accepted upon delivery unless Buyer rejects the Products within five (5) business days of arrival at Buyer's designated destination. The burden of proving when damage occurred will be on Buyer.

**6. Allocation.** In no event will Seller be required to sell a greater number of Products than it has available or allocated for such purposes. If Seller is unable to supply the total demands for any of the Products, Seller has the right to allocate its available supply among its customers in such manner as Seller deems to be fair and equitable. IN NO EVENT WILL SELLER BE OBLIGATED TO PURCHASE PRODUCTS FROM OTHERS IN ORDER TO ENABLE IT TO DELIVER PRODUCTS TO BUYER, NOR WILL IT BE LIABLE FOR ANY DAMAGES OR CLAIMS ARISING THEREFROM, INCLUDING BUT NOT LIMITED TO INCIDENTAL AND/OR CONSEQUENTIAL AND/OR PUNITIVE DAMAGES, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR OMISSION OF SELLER.

**7. Warranty; Certain Patent Matters; Disclaimer of Warranty; Exclusive Remedies.** (a) Seller warrants that the Products sold hereunder will, at the time of delivery: (i) conform to Seller's applicable standard specifications for such Products in effect at the time of shipment or such other specifications as are expressly agreed upon by Seller and Buyer in writing; (ii) be adequately contained, packaged, and labeled; and (iii) conform to any promises and affirmations of fact made on the container and label. In the event that any such Products fail to conform to the foregoing warranty, Seller will, at its option, repair or replace such nonconforming Products, or credit Buyer for an amount not to exceed the original sales price of such Products. Shipping costs incurred in returning such nonconforming Products to Seller will be borne by Seller, but Seller will in no event be liable for any inspection, handling, or packaging costs incurred by Buyer in connection with such Products. Buyer's negligence, misuse, improper installation, or unauthorized repair or alteration, will void this warranty.

(b) Seller warrants that the Products delivered hereunder will infringe no claim of any validly issued and enforceable patent covering the Products themselves. Seller does not warrant against infringement by reason of the use of such Products in combination with other articles or materials or in the practice of any process and Buyer assumes all responsibility for determining whether relevant patents exist covering such use, together with all risk and liability arising out of infringement of any such patents.

**(c) THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN ARTICLES 7(a) AND 7 (b). NO WARRANTIES BY SELLER (OTHER THAN A WARRANTY OF TITLE AS PROVIDED BY THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER ANY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY AND A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

(d) **THE REMEDIES SET FORTH HEREIN WILL BE EXCLUSIVE.** Buyer's receipt of any Products delivered hereunder will be an unqualified acceptance of, and a waiver by Buyer of any and all claims (including claims arising under the warranties specified in Articles 7(a) and 7(b)) with respect to such Products unless Buyer gives Seller notice of claim (i) within six (6) months from date of shipment of such Products or (ii) within ten (10) days after Buyer receives written notice of any claim of patent infringement covered by Article 7(b). **NO CLAIMS OF ANY KIND AGAINST SELLER, WHETHER AS TO PRODUCTS DELIVERED, OR FOR DELAYED DELIVERY OR NONDELIVERY OF PRODUCTS, AND WHETHER OR NOT BASED ON NEGLIGENCE OR WARRANTY, WILL BE GREATER IN AGGREGATE AMOUNT THAN THE PURCHASE PRICE OF THE INDIVIDUAL INSTANCES OF PRODUCTS IN RESPECT OF WHICH SUCH CLAIMS ARE MADE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF REVENUE OR PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITIES OR DAMAGE TO GOOD WILL OR REPUTATION), OR DAMAGES CLAIMED BY THE OTHER PARTY FOR ANY THIRD PARTY CLAIMS ASSERTED AGAINST IT, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF, OR BREACH OF WARRANTIES BY, SUCH PARTY. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.** Buyer recognizes that the purchase prices paid by Buyer for the Products are based in part on the disclaimer of warranty and limitation of liability provisions set forth herein and that, in the absence of Buyer's agreement to such terms, the purchase prices for the Products would be significantly higher. Without limiting the generality of the foregoing, Buyer assumes all risk and liability for the results obtained by the use of any Products delivered hereunder in combination with other articles or materials or in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Seller, by way of technical advice or otherwise, with respect to the use of such Products. Notwithstanding any right under the applicable statute of limitations to bring a claim, except for claims arising under Article 7(b), **NO WARRANTY CLAIM BASED UPON OR ARISING IN ANY WAY OUT OF THIS AGREEMENT MAY BE BROUGHT BY BUYER AFTER SIX (6) MONTHS FROM DATE OF SHIPMENT OF THE PRODUCTS AND BUYER HEREBY WAIVES ITS RIGHT TO FILE ANY SUCH WARRANTY CLAIM AFTER THE EXPIRATION OF SUCH SIX (6) MONTHS PERIOD.**

**8. Disclaimer on Technical Advice of Seller.** (a) **IT IS EXPRESSLY UNDERSTOOD THAT ANY TECHNICAL ADVICE FURNISHED BY SELLER WITH REFERENCE TO THE USE OF ITS PRODUCTS IS GIVEN GRATIS AND SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR THE ADVICE GIVEN OR RESULTS OBTAINED, ALL SUCH ADVICE BEING GIVEN AND ACCEPTED AT BUYER'S RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY PRODUCTS IN COMBINATION WITH OTHER ARTICLES OR MATERIAL OR IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COST, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER WITH RESPECT TO THE USE OF SUCH PRODUCTS BY**

WAY OF TECHNICAL ADVICE OR OTHERWISE. FURTHER, BUYER HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS THE EXPERIENCE AND CAPABILITY OF DETERMINING THE CORRECT PRODUCT FOR BUYER'S INTENDED APPLICATION.

(b) Buyer will indemnify and save Seller, and Seller's controlled affiliates, and each of their respective officers, directors, stockholders, employees, agents, attorneys and distributors (collectively, the "Seller Indemnified Parties"), harmless against any and all losses, damages, claims, costs or expenses (including reasonable attorney's fees and expenses) of any kind incurred by reason of any liability imposed upon Seller for any and all losses, damages, claims, costs and expenses because of property damage or bodily injuries or death sustained, arising out of, related to or resulting from the sale, use, testing, or handling of the Products or any use of the Products in any product produced by Buyer unless (i) caused solely by the gross negligence of Seller; (ii) Buyer has notified Seller in writing of any third party's claims or demands within fifteen (15) days after the Buyer received notice thereof; and (iii) Seller still has sufficient legal recourse and Buyer has done nothing to prejudice Seller's rights in contesting such claim.

(c) Notwithstanding the foregoing, in the event that Buyer uses any Products in any application in the medical field of use, including without limitation, in medical devices, products and testing equipment, Buyer will indemnify and save the Seller Indemnified Parties harmless against any and all losses, damages, claims, costs or expenses (including reasonable attorney's fees and expenses) of any kind incurred by reason of any liability imposed on any Seller Indemnified Party for any losses, damages, claims, costs and expenses because of property damage or bodily injuries or death sustained, arising out of, related to or resulting from the sale, use, testing, or handling of the Products or any use of the Products in any product produced by Buyer.

**9. Force Majeure.** Seller will not be liable for its failure to perform hereunder due to contingencies beyond its reasonable control, including but not limited to, acts of God, fires, floods, wars, sabotage, riots, civil strife, accidents, labor disputes, lockouts or shortages (whether or not such are within Seller's ability to settle), any governmental laws, ordinances, rules, regulations, action or inaction (whether valid or invalid including, but not limited to, priorities, requisitions, allocations and price adjustment restrictions), delay or inability to obtain supplies, raw materials, energy, products, equipment or transportation, and any other similar or different contingency. Seller will have the right upon written notice to omit during the period of such contingency all or any portion of the quantity of the Products to be delivered during such period, whereupon the total quantity of the Products to be delivered hereunder will be reduced by the quantity so omitted. If due to any such contingency Seller is unable to supply the total demands for any Products to be delivered hereunder, Seller will have the right to allocate its available supply among its customers in such manner as Seller deems to be fair and equitable. **IN NO EVENT WILL SELLER BE OBLIGATED TO PURCHASE MATERIAL FROM OTHER THAN ITS REGULAR SOURCES OF SUPPLY IN ORDER TO ENABLE IT TO SUPPLY PRODUCTS TO CUSTOMERS HEREUNDER.**

**10. Assignment.** Buyer's rights under these Terms and Conditions of Sale and any right of Buyer to receive goods in exchange for payment evidenced on the reverse hereof may not be assigned or encumbered in any way except with the prior written consent of Seller.

**11. Confidentiality.** Buyer and Seller agree to keep confidential any and all information concerning the other party that may be obtained during the course of the performance of these Terms and Conditions of Sale and to refrain from disclosing or divulging the same to any third party.

**12. Governing Law.** The validity, interpretation and performance of the terms hereof will be governed, construed, and interpreted in accordance with the laws of the State of South Carolina and the Federal Arbitration Act without giving effect to any choice or conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Neither course of performance, course of dealing or usage of trade will be used to interpret, construe, qualify, explain or supplement any of these Terms and Conditions of Sale.

**13. Arbitration.** (a) *Binding Final Arbitration.* Any controversy or claim arising under or in relation to these Terms and Conditions of Sale, any agreement between the parties for the sale and purchase of Products, or the breach hereof or thereof, or the relations between Buyer and Seller as to Products will be finally settled by arbitration by a panel of three arbitrators appointed by the American Arbitration Association (unless the amount in dispute is less than \$25,000, in which case there will be only one arbitrator) in the City of Greenville, South Carolina, administered by the American Arbitration Association in English, except as specified otherwise in these Terms and Conditions of Sale, under the then applicable American Arbitration Association rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In connection with any arbitration proceeding, neither Seller nor any third party will be required to disclose to Buyer any confidential pricing, technical or other information deemed by Seller to be sensitive competitive information and will be required to disclose this type of information only under a strict confidentiality agreement that limits the use and disclosure of such information to the arbitrators, previously identified independent experts who are not in a position to profit from the information, and counsel for the parties, and only after any such arbitrator, expert, or counsel has agreed in writing to abide by the limitations on disclosure and not to use the information for any purpose other than the arbitration proceeding. The statute of limitations under the

laws of the State of South Carolina applies to any arbitration arising under this Agreement.

(b) *Limitation on Arbitration Remedies.* THE ARBITRATORS WILL HAVE NO POWER TO AWARD PUNITIVE, CONSEQUENTIAL, MULTIPLE, INCIDENTAL OR ANY OTHER DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE OR TO MODIFY THESE TERMS AND CONDITIONS OF SALE IN ANY WAY.

**14. Entire Agreement; Modification and Waiver.** This document, any attachments hereto, and the terms and conditions contained in any written agreement between Buyer and Seller expressly signed by an authorized officer of Seller constitute the entire understanding of the parties, contain all of the representations and agreements between them and supersede all previous agreements and representations between the parties with respect to the Products shipped hereunder. In the event of an inconsistency between this document and any other document (except a written contract executed by Seller) or understanding or course of dealing or usage of trade, this document will govern. No modification or waiver of the terms hereof will be binding upon Seller unless approved in writing by one of Seller's authorized representatives or will be affected by the delivery of Product or the acknowledgment or acceptance of purchase order forms, invoices, shipping papers or other documents containing other or different terms whether or not signed by an authorized representative of Seller.