

## FIT Terms and Conditions

**PAYMENT:** Payment is due in U.S. dollars. 30% of the purchase price in the form of a non-refundable prepayment is due upon receipt of order; 60% prior to shipment; and 10% remainder upon Acceptance, but no later than sixty (60) days after date of shipment. "Acceptance" is deemed complete upon the earlier of (1) utilization in commercial production or other intended use of any part or product, or (2) sixty days after shipment, if Buyer fails to reject the goods before such date. Late payments are subject to interest at the highest rate allowed by applicable law. To be eligible for an open account, you must sign our CREDIT AGREEMENT and meet credit approval criteria. Upon approval of credit – 2% 10 Net 30 unless agreed otherwise in writing. Seller reserves the right in its reasonable judgment to place Buyer on credit hold in response to Buyer's financial condition.

**TAXES:** Any tax, duty, fee or charge imposed currently or subsequently by any governmental or other taxing authority shall, upon demand by Seller, be paid by Buyer in addition to Seller's quoted or invoiced prices, except where Buyer timely provides Seller with a valid tax exemption certificate.

**SECURITY INTEREST:** Buyer grants Seller a continuing first security interest and lien, or the equivalent in a non- U.S. jurisdiction ("Lien"), upon any goods or services that Seller provides to Buyer hereunder, and in the proceeds and products thereof (collectively the "Collateral"), until Buyer makes full payments required hereunder. Buyer agrees, as reasonably necessary, to execute further documents and to take all actions Seller requests to protect and perfect this Lien. Buyer irrevocably appoints Seller as Buyer's attorney-in-fact, which shall be an appointment coupled with an interest, to execute and file on behalf of Buyer a UCC-1 financing statement, or the equivalent in a non-U.S. jurisdiction, describing the Collateral. California law, without regards to conflict of laws provisions, governs the creation, perfection and enforcement of this Lien and rights thereunder. All Seller's rights and remedies shall be cumulative.

**CHANGES; CANCELLATION; RESCHEDULING:** Any change in ship date resulting in ship dates shorter than standard lead-time will be subject to an expedite fee. In addition to any price increase owed as a result of Buyer's changes, cancellations or rescheduling, if Buyer cancels all or part of an order under this Agreement at any time prior to the original scheduled shipment date, then Buyer agrees to pay Seller the following amounts: (i) the total unit price for all goods and services which Seller has completed in accordance with the canceled order; and (ii) the actual costs incurred by Seller for work-in-process ("WIP") and Raw Materials, to the extent they are allocable to Buyer's canceled order and cannot

otherwise reasonably be used, sold or returned by Seller, plus a reasonable profit on the canceled transaction. In addition, Buyer will reimburse Seller for any costs or reconfiguration charges necessary to make WIP and Raw Materials available for sale to another buyer. "WIP" means all labor performed and material that has been transformed, altered or processed by Seller, its contractors, agents or consultants pursuant to an order. "Raw Materials" means materials that have been purchased or committed to by Seller, excluding WIP. All cancellations must be made prior to shipment; cancellations on or after date of scheduled shipment shall be null and void. Upon prior written agreement of the parties and payment of the above fees and/or costs, as reasonably determined by Seller, Buyer may (1) reschedule delivery and/or (2) change the mechanical configuration, specifications or description of the goods or services ordered. Any delay (or delays) requested by Buyer which result in a delivery date more than two months from the originally scheduled delivery date will be treated as a cancellation, as set forth above. Change orders submitted after Seller receives an order are subject to Seller's discretion and will be charged with restocking and/or reconfiguration fees of 20% of the sales order amount in addition to any increased costs.

**SHIPPING METHOD:** FIT reserves the right to ship the best way for on-time delivery. FIT will try to accommodate customers' shipping preference whenever possible.

**FOB:** Origin. We pre-pay and bill for shipping and handling or ship on Buyer's shipping account.

**OVERAGE:** Unless otherwise notified, all orders are subject to shipping and invoicing a maximum of 5% overage.

**INVENTORY:** FIT does not store, keep, or otherwise promise to inventory any parts unless agreed to in writing by both parties. FIT does offer Kanban program when agreed upon by both parties.

**QUOTES:** All quotes are valid for a period of 60 days, unless otherwise specified. If the quoted specifications changes, you may be subject to a price change (both up and down) necessitated by the actual product information. All lead-time quoted are in working days (not including weekends and holidays) and based on material availability and capacity at the time of the quote. The lead-time is subject to change at the time of placement of order based on material availability, capacity, and accuracy and completion of information provided.

**LIMITED WARRANTY:** Seller warrants to Buyer as original purchaser during the Warranty Period (as defined below and as applicable) that: (i) parts shall conform to proper form, fit and initial function on the date of shipment without any warranty of duration in Buyer's

application; (ii) parts shall be free from defects in material and workmanship and shall conform to specifications agreed upon in writing by the parties. Notwithstanding the foregoing, if Seller's quotation indicates that products are being provided by Seller "as is" or that this Agreement is a "results based contract", then notwithstanding anything to the contrary herein, Buyer expressly acknowledges that the products provided hereunder are provided on an "as is" basis without warranty of any kind, and ALL WARRANTIES WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER SELLER OBLIGATIONS OR LIABILITIES IMPLIED BY LAW ARE EXPRESSLY DISCLAIMED. Any claim for breach of this warranty must be submitted to Seller within the ninety (90) days from the date of Acceptance, but in no event later than one hundred and twenty (120) days from date of shipment (the "Warranty Period"). This warranty will not apply to subsequent purchasers. This warranty will apply to Buyer only if Buyer: (a) promptly notifies Seller in writing during the period set forth above of the claimed defect or nonconformity, and (b) makes the item(s) available for correction at Buyer's facility or returns the item(s) after obtaining prior written authorization from Seller. Buyer bears the risk of loss or damage during transit and all expenses incurred by Seller for unauthorized shipments. Unless otherwise agreed in writing, Buyer's return of such items constitutes Buyer's authorization for Seller to repair the goods and to invoice Buyer for any and all reasonable costs of repair, labor, parts and freight on items not covered by the terms of the applicable warranty. Seller's liability hereunder is limited solely, at Seller's option, to repair or replacement with new or "like new" equivalent goods, and any warranty service is limited to Seller's standard working hours (usually 8 a.m. to 5 p.m., Monday through Friday). Seller shall hold all right, title and interest in and to any goods replaced under this warranty provision. The Seller's financial liability shall be limited to fabrication price of the part only, unless the part is purchased as turnkey assembly, and not to exceed the total amount of the Purchase Order. The period for making warranty claims shall not be extended by acts of Seller in compliance with this section. This warranty is voidable by Seller should (1) Buyer not reasonably comply with the requirements and recommendations of Seller, (2) Seller's examination discloses to its satisfaction that such defect or nonconformity does not exist, or (3) Seller's examination discloses to its satisfaction that a defect or nonconformity was caused, in whole or in part, by events or conditions beyond Seller's reasonable control or by any acts or omissions of Buyer, the failure of designs or components required by Buyer, improper application, or unauthorized maintenance, repair or alteration. THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES SUBJECT TO ANY STATUTORY WARRANTIES THAT CANNOT BE EXCLUDED, SELLER MAKES NO WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE PRODUCT OR SERVICE IF ANY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, FAVORABLE PRICING, TIMELY

DELIVERY AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO BUYER. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY LAW. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO BUYER. THE FOREGOING CONSTITUTES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR SELLER FURNISHING DEFECTIVE OR NONCONFORMING GOODS OR MATERIALS.

**INDEMNITY:** Buyer agrees to indemnify, defend and hold Flex Interconnect employees, officers, directors, stockholders, affiliates, representatives, agents, subcontractors and customers harmless from and against any and all claims, actions, losses, expenses, damages, penalties, fines, liabilities, judgements and settlements, costs and expenses, including attorney's fees, arising out of, relating to or resulting from any (a) personal injury or property damage caused by Goods or Services, (b) breach of warranties or defects in Goods or Services, or (c) act, omission or negligence of the Buyer, its agents, employees or subcontractors, or (d) use in any implanted medical devices.

**ASSIGNMENTS:** Neither party shall assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other, except that Seller may assign its right to receive payment, assign this agreement to an affiliated, subsidiary or successor company and/or subcontract the provision of services.

**NON-WAIVER:** Failure by a party to take affirmative action with respect to any breach of these terms and conditions by the other party shall not be construed as a waiver of that breach or of future breaches.

**COMPLIANCE WITH AND GOVERNING LAW; SURVIVAL OF TERMS:** Each party shall comply with the laws applicable to its performance of this Agreement; without limitation, Buyer shall comply with and indemnify Seller against all liabilities arising from any breach by Buyer or its representatives of any corrupt activities, ethical practices, export control or foreign trade laws that may be applicable to this Agreement or the products, licenses or services that it obtains hereunder. This transaction will be governed, construed and enforced in all respects by the laws of the State of California without regard to conflict of laws considerations. The parties consent to Alameda County, California, and any California state and/or federal district court located within its boundaries, as being the exclusive venue and jurisdiction of any litigation or other dispute resolution modality; except that Seller may take action in any jurisdiction to prevent disclosure of Seller confidential information, or enforce a judgment or other decision. If all or any part of

these terms and conditions is determined to be unenforceable, the remaining provisions will remain enforceable.

**DISPUTES:** Any dispute or claim arising out of this Agreement, or the goods or services provided hereunder, shall at Seller's discretion be decided by binding arbitration. If the parties cannot agree on an arbitrator, the Superior Court of Santa Clara County shall appoint the arbitrator. Filing a judicial action for recording a notice of pending action, order of attachment, receivership, injunction or other provisional remedies, shall not waive these arbitration rights nor is recourse to such provisional relief precluded by the availability of arbitration hereunder. The parties shall split the arbitrator's fees evenly.

**ATTORNEYS FEES:** In any judicial or arbitration proceeding arising out of this Agreement, or the products or services provided hereunder, the prevailing party is entitled to recover all reasonable costs incurred pertaining to such proceeding, including without limitation reasonable costs and fees of attorneys or other professionals ("Expenses"), except that and such Expenses awarded must bear a reasonable relationship to the prevailing party's actual recovery.