

# Continental Electronics

June 4, 2024

## CONTINENTAL ELECTRONICS STANDARD TERMS AND CONDITIONS (1-1-13)

Unless otherwise specified in Continental Electronics Corporation (CEC), Dallas, Texas U.S.A. quotations/ proposals, all of the following general terms and conditions apply to any order placed as a result of this specific quotation/proposal.

### **1. PRICE**

(a) Prices are in United States dollars, payable in Dallas, Texas and include delivery of equipment as specified in Section 2(a) hereof and packing for either air freight or ocean freight export in accordance with CEC's standard commercial practices. Prices are based on the quantities specified and are subject to written confirmation in the event quantities different from those specified are ordered.

(b) Equipment prices do not include tests performed in the presence of the purchaser's representative or tests different from those normally made by CEC.

(c) Equipment prices include all taxes in effect in the country of origin on the date of this quotation/proposal; they do not include taxes which are inapplicable to equipment exported there from. Therefore, proof of export, in such detail as may be required by the tax authorities concerned, shall be furnished to CEC promptly at CEC's request. If, as a result of the purchaser's failure to furnish such proof of export, CEC becomes liable for the payment of any tax not applicable to equipment exported from the country of origin, the purchaser shall promptly pay to CEC the amount thereof upon the submission of CEC's invoices. Any tax which may be imposed in the country of origin subsequent to the date of this quotation/proposal shall be added to the price payable by the purchaser. Any tax in effect in, or which may be imposed by, a jurisdiction outside of the country of origin shall be the sole responsibility of the purchaser.

### **2. ACCEPTANCE AND DELIVERY**

(a) The delivery by CEC of equipment to the purchaser shall constitute acceptance of that equipment by purchaser, unless notice of defect or nonconformity is received by CEC within fifteen (15) days of receipt of the equipment. Notwithstanding the foregoing, any use of the product by the purchaser, its agents, employees, contractors or licensees, for any purpose, after receipt thereof, shall constitute acceptance of that product by the purchaser.

The equipment shall be delivered **EX-WORKS**, at the factory or warehouse of CEC and/or its supplier in the United States or in such country of origin as may be specified in this quotation/proposal, on or before the confirmed delivery period. In its sole discretion, CEC may make partial deliveries from time to time.

(b) The term **EX-WORKS** (EXW), and all other INCOTERMS, if used in this quotation/proposal, shall be defined in accordance with INCOTERMS 2000, a copy of which will be furnished on request.

(c) Delivery shall be complete, and title to each item of the equipment and the risk of loss thereof, shall pass to the purchaser, upon delivery to the carrier at the factory or warehouse of CEC and/or its supplier. The purchaser shall have no right to inspect the equipment prior to delivery, unless the purchaser specifically requests such right, in writing, and CEC agrees, in writing, to grant such right.

(d) The delivery dates and/or periods specified are only estimates and are computed from the date on which all of the following are in CEC's possession: (1) an order acceptable to CEC, (2) evidence of completion of payment arrangements satisfactory to CEC (e.g. notice from U.S. bank acceptable to CEC of confirmation of the purchaser's irrevocable Letter of Credit in conformity with Section 6 hereof), (3) down payment, if specified, and (4) all information and documents necessary to permit CEC to proceed immediately and without interruption.

(e) Delivery estimates are subject to confirmation at the time of CEC's acceptance of the order. Notwithstanding such confirmation, CEC shall not be liable on account of any delay in the delivery of, nor shall CEC be liable for inability to deliver, any items of equipment, if such delay or inability results directly or indirectly from "Force Majeure", as defined in Section 3 hereof. In no event shall CEC be liable for consequential damages for delay in the delivery of, or failure to deliver, any items of equipment.

(f) In the event that at such time as CEC is prepared to deliver items of equipment, such delivery is prevented, for a period of thirty days or more, either by reason of the purchaser's failure to arrange, or to request CEC to arrange, for shipment, or by reason of any cause referred to in Section 3 hereof, CEC may deliver such items by placing the same in storage in CEC's warehouse, or in a public warehouse. In such event, delivery shall be complete, and title to such items, and the risk of loss thereof, shall pass

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to the purchaser, when the same are placed in storage; all storage charges (including reasonable storage charges imposed by CEC, if storage is in CEC's warehouse) and all expenses, if any, incurred by CEC in connection therewith shall be for the account of the purchaser.

### 3. FORCE MAJEURE

"Force Majeure", as used in this quotation/proposal, means any law, order, regulation, direction or request of the United States Government, of any other government having jurisdiction over CEC, its subcontractors and/or its suppliers, or of any department, agency or corporation of any one or more of such governments; failure or delay of transportation; insurrection; riots; sabotage; national emergency; war; acts of public enemies, strikes or other labor difficulties; inability to obtain necessary labor, manufacturing facilities, material or components from CEC's usual sources; fires, floods, or other catastrophes, acts of God; acts or omissions of the purchaser; or any causes of like or different kind beyond the control of CEC. CEC shall not be liable for failure to perform any of its obligations, if such failure to perform results directly or indirectly from "Force Majeure".

### 4. WARRANTY

(a) CEC warrants each item of equipment of its manufacture furnished hereunder to be free from defects in material and workmanship under normal use and service, when properly installed, maintained and used for the purposes for which it is designed, for a period of one year after the date of delivery (in accordance with Section 2 hereof), provided, that notice of any such alleged defect is given to CEC within sixty (60) days after the discovery thereof, and provided, that inspection by CEC confirms the existence thereof to CEC's reasonable satisfaction. CEC's liability under this warranty is limited to the replacement of defective parts to the purchaser EX-WORKS at CEC's factory or warehouse. At CEC's request, any part alleged to be defective shall be returned to CEC for inspection, properly packed and all expenses prepaid, but no part shall be returned to CEC by the purchaser prior to authorization by CEC. The foregoing warranty does not apply to electron tubes, batteries or expendable parts normally consumed in operation, all of which shall be subject to the parts manufacturer's standard warranty and adjustment policies covering such products and parts. **CEC shall in no event be liable for loss of use or for incidental, indirect, or consequential damages, whether in contract or in tort.**

(b) Equipment furnished by CEC, but not of its manufacture, bears only the warranty given by the manufacturer thereof. Used equipment is sold "as is" and bears no warranty.

(c) The purchaser agrees that CEC has the right to defend, or, at its option, to settle, and CEC agrees, at its own expense, to defend or, at its option, to settle, any claim, suit or proceeding brought against the purchaser on the issue of infringement of any United States patent by any product, or any part thereof, supplied by CEC to the purchaser hereunder. CEC agrees to pay, subject to the limitations hereinafter set forth in this subsection, any final judgment entered against the purchaser on such issue in any such suit or proceeding defended by CEC. The purchaser agrees that CEC, at its sole option, shall be relieved of the foregoing obligations, unless the purchaser notifies CEC promptly, in writing, of any such claim, suit or proceeding and gives CEC proper and full information and assistance to settle and/or to defend any such claim, suit or proceeding. If the product, or any part thereof, furnished by CEC to the purchaser becomes, or in the opinion of CEC may become, the subject of any claim, suit or proceeding for infringement of any United States patent, or in the event of an adjudication that such product or part infringes any United States patent, or if the use, lease or sale of such product or part is enjoined, CEC may, at its option and its expense, (1) procure for the purchaser the right under such patent to replace such product or part, or (2) modify such product or part, or (3) remove such product or part and refund the aggregate payments and transportation costs paid therefore by the purchaser, less a reasonable sum for use, damage and obsolescence. CEC shall have no liability for any infringement arising from: (i) the combination of such product or part, with any other product or part, whether or not furnished to the purchaser by CEC, or (ii) the modification of such product or part, unless such modification was made by CEC, or (iii) the use of such product or part in practicing any process, or (iv) the furnishing to the purchaser of any information, data, service or application assistance. The purchaser shall hold CEC harmless against any expense, judgment or loss for infringement of any United States patents or trademarks which results from CEC's compliance with the purchaser's designs, specifications or instructions. CEC shall not be liable for any costs or expenses incurred without CEC's written authorization, and in no event shall CEC's total liability to the purchaser under, or as a result of compliance with, the provisions of this subsection (c) exceed the aggregate sum paid to CEC by the purchaser for the allegedly infringing product or part, exclusive of any refund under option (3) above. **CEC shall in no event be liable for loss of use or incidental, indirect, or consequential damages, whether in contract or in tort.** The foregoing states the entire warranty by CEC, and the exclusive remedy of the purchaser, with respect to any alleged patent infringement by such product or part.

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**(d) No warranties, whether statutory, express or implied, including, but not limited to, those of merchantability, fitness for any particular purpose, and of freedom from infringement or the like, other than those set forth in this Section 4, shall apply to the equipment furnished hereunder.**

## **5. IMPORTATION AND INSTALLATION**

The purchaser assumes all responsibility for the importation, installation and operation of the equipment, including obtaining all required permits, licenses or certificates. CEC shall in no event be liable for the failure of any government to issue such permits, licenses or certificates.

## **6. PAYMENT TERMS**

Payment for the equipment specified in this quotation/proposal shall be made in U. S. Dollars, through the medium of an irrevocable Letter of Credit in favor of Continental Electronics Corporation, confirmed by a U. S. bank acceptable to CEC. Said Letter of Credit shall be valid for a period of time sufficient to enable CEC to receive payment in full plus thirty (30) days, shall be for the total price of the equipment, shall be in a form acceptable to CEC, and shall authorize partial payments against partial deliveries. Any payment received by CEC past the required due date shall be assessed a late payment fee of five (5) percent of the amount owed. In the event that the shipping expenses specified in Section 7 hereof are to be prepaid by CEC for the purchaser's account, the Letter of Credit shall include an amount sufficient to cover same. The Letter of Credit shall provide for payment to CEC upon presentation to the confirming bank for thirty percent (30 %) of the total value of the order, accompanied by a commercial invoice and a simple signed receipt, with the balance to be paid against invoices and shipping documents, or by CEC's certificate that the items of equipment covered by said invoices have been and are ready for delivery, but delivery thereof has been prevented by reason of a cause specified or referred to in subsection (f) of Section 2 hereof for a period of thirty (30) days or more. For shipment of merchandise of other than U.S. origin, the Letter of Credit shall permit shipment from as many other countries as may be required and shall permit presentation of non-negotiable copies of bills of lading, provided they are accompanied by CEC's declaration that the originals have been airmailed directly to the opening bank. All bank charges in connection with said Letter of Credit, including those of the confirming bank, shall be for the account of the purchaser.

## **7. SHIPMENT**

If the purchaser requests CEC to arrange for shipment and CEC agrees in writing, to do so, CEC shall act as the purchaser's agent for such purpose. In such case, and if the purchaser so requests, CEC shall take out marine insurance, including standard warehouse coverage, and such other insurance as the purchaser may specify, in writing, if obtainable by CEC, to cover shipment. All freight and insurance charges, out-of-pocket expenses, fees and costs, including the cost of preparing consular invoices, shall be paid by the purchaser upon submission of invoices therefore. Unless otherwise instructed by the purchaser, CEC will make consular declarations in good faith, according to its best judgment, but without liability for any errors or incorrect declarations.

## **8. PURCHASES FINANCED BY U.S. GOVERNMENT**

If the purchase of the equipment is to be financed directly or indirectly with funds provided by the United States of America (for example, Export-Import Bank or AID funds) the purchaser should so advise CEC promptly.

## **9. EXPORT/IMPORT LICENSES & GOVERNMENT REGULATIONS**

The purchaser, or CEC, whichever is the proper party, shall make application for any government export/import license, preference rating or other government authorization which may now, or hereafter, be required in order to manufacture or export the equipment, and the parties shall cooperate with and assist each other in every manner reasonably possible in securing any such license, rating or authorization. CEC shall in no event be liable for any government's failure or refusal to issue, cancel or suspend any such license, rating or authorization.

## **10. OTHER CONDITIONS**

(a) Modifications of the equipment by CEC or its suppliers may be made from time to time prior to delivery for reasons such as improvement in performance or availability of materials, but not to such an extent that the performance of equipment will be adversely affected.

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(b) No sale or lease hereunder shall convey any license by implication, estoppel or otherwise, under any proprietary or patent rights of CEC, to practice any process with such product or part, or for the combination of such product or part, with any other product or part.

(c) This quotation/proposal is subject to change at any time upon notice and expires ninety (90) days from its date, unless otherwise indicated herein or extended, in writing, by CEC. This quotation/proposal does not constitute an offer by CEC, and any order or orders placed hereunder are subject to written acceptance by CEC in the United States at its Dallas, Texas offices. The banking, negotiation, endorsement or other use of the purchaser's down payment, if any, shall not constitute acceptance by CEC. In the event CEC does not receive, within thirty (30) days after receipt of the purchaser's order, evidence of completion of payment arrangements satisfactory to CEC, CEC shall have the right, at its option, to cancel, without prior notice, the contract resulting from its acceptance of the order.

(d) CEC is willing to consider terms and conditions different from, or in addition to, those set forth herein. However, unless CEC expressly agrees thereto, in writing, prior to, or at the time of, acceptance of the purchaser's order, CEC's acceptance of such purchase order is hereby expressly made conditional on assent by the purchaser to all of the terms and conditions stated herein and/or elsewhere in this quotation/proposal and to the waiver by the purchaser of any different or additional terms or conditions.

(e) This quotation/proposal, any orders placed pursuant hereto, and any contracts resulting from acceptance of such orders shall be construed and interpreted in accordance with, and governed by, the laws of the State of Texas, United States of America.

(f) This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement. No course of prior dealings between the parties, and no usage of trade, shall be relevant to supplement or explain any terms used in any contracts resulting from acceptance of any orders placed pursuant hereto. Acceptance or acquiescence in a course of performance rendered under any such contract shall not be relevant to determine the meaning of such contract, even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

(g) Any contracts resulting from acceptance of any orders placed pursuant hereto can be modified or rescinded only in writing signed by duly-authorized representatives of both of the parties.

(h) This quotation/proposal is submitted with the understanding that the ultimate destination of the equipment is the country indicated herein, and all invoices issued by CEC in connection with the sale thereof shall so indicate. The purchaser is hereby notified that diversion of the equipment to any other destination contrary to United States law is prohibited. Accordingly, if the foregoing understanding is incorrect, or if the purchaser intends to divert the equipment to any other destination, then the purchaser shall immediately inform CEC of the correct ultimate destination.

(i) The prices stated in this quotation/proposal are submitted on the understanding that any order or contract resulting therefrom shall, at CEC's election, be subject to adjustment upward or downward to reflect changed costs to CEC.

**(j) Limitation of Liability.** CEC shall not be liable for any consequential damages of the purchaser. This limitation of liability of CEC shall include, but is not confined to, consequential damages arising from or caused by, directly or indirectly, a delay in delivery of the Articles, breach of warranty, use of the Articles by purchaser, breach of any obligation by CEC, negligence, strict liability and any other act or omission of CEC. Liability to third parties for bodily injury, including death, resulting from CEC's performance shall be determined in accordance with applicable law, and shall not be affected by the liability limitation stated above in this paragraph.