

## Terms and Conditions of Sale

ALTEN Battery Charger Inc. (herein referred to as; ALTEN)

### 1. SCOPE

The Terms and Conditions ("Terms") contained herein shall apply to all quotations and offers made by and purchase orders accepted by ALTEN. These Terms apply to all sales made by ALTEN except to the extent the Terms conflict with a Sales Agreement signed by ALTEN and Buyer. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer's order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. ALTEN's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of ALTEN before becoming binding on either party.

### 2. PRICE, TAXES AND QUOTATIONS

Prices are subject to change on thirty days notice to Buyer. Any order that can be cancelled and rescheduled pursuant to paragraph 6(a) is subject to a price change immediately. All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by ALTEN are those current at the date of quotation and shall be subject to variation by ALTEN.

### 3. DELIVERY

Unless otherwise agreed in writing, sales are CIP destination region port of entry (Inco terms 2000). ALTEN may deliver products in one or more consignment and invoice each consignment separately. ALTEN reserves the right to ship product that is not subject to cancellation in advance of the agreed shipping date. Unless otherwise agreed in writing, delivery time is not of the essence. Except as specified in 6(b), ALTEN does not accept liability for any loss arising from delay in delivery of products.

### 4. PAYMENT TERMS

Unless otherwise agreed in writing, buyers without established credit accounts may make full payments with an accepted credit card at the time of order. Established buyers with approved credit accounts shall be net thirty (30) days from the date of invoice. ALTEN reserves the right to request a deposit at the time of order. Buyer agrees to pay interest on any unpaid balance at a rate of five percentage points above the annual Federal Funds rate as specified in the Wall Street Journal on the day the balance becomes due. Unless otherwise agreed in writing, all payments are to be in United States dollars. For contracts outside USA, ALTEN may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to ALTEN. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that ALTEN is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorneys fees and costs of suit.

## 5. NON-CONFORMING DELIVERY AND RISK OF LOSS

Buyer shall notify ALTEN of any visible defects, quantity shortages or incorrect product shipments within seven (7) days of receipt of the shipment. Failure to notify ALTEN in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments, subject to Buyer's rights under Section 7. Seller shall retain a security interest in the products until Buyer's final payment to Fairchild for the products. Risk of loss and title shall pass to Buyer as soon as the products have been placed with a transport agent.

## 6. ORDER CANCELLATION

(a) Buyers Cancellation for Convenience: Buyer may cancel any order for convenience on the following terms: (i) For standard products, Buyer may cancel or reschedule a product without penalty if the cancellation is more than thirty (30) days from the Confirmed Shipping Date (as specified in ALTEN's Order Acknowledgement or other document); cancellations within 30 days of a Confirmed Shipping Date must be approved in writing by a ALTEN sales manager and may be subject to special charges (ii) For nonstandard parts, custom products, or standard parts with minimum usage Buyer may cancel or reschedule more than ninety (90) days from the Confirmed Shipping Date, except that Buyer shall accept delivery of all such products which are completed at the time of cancellation or rescheduling. Those nonstandard products which are in the work-in-process inventory at the time of cancellation or rescheduling shall be paid for by Buyer at a price equal to the completed percentage of the product multiplied by the price of the finished product. Buyer also shall pay promptly to ALTEN the costs of settling and paying claims arising out of the termination of work under ALTEN's subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation.

(b) Buyers Cancellation for Default: Upon written notice to ALTEN, any order may be canceled in whole or in part in accordance with the terms hereof, because of ALTEN's failure to deliver products by the Confirmed Shipping Date (this failure hereinafter called "Default"). Cancellation by Buyer for ALTEN's Default, which may entitle Buyer to procurement costs, shall be effective only upon ALTEN's failure to correct such Default within a reasonable period of time, but not less than thirty (30) days after receipt by ALTEN of written notice of such Default. Upon cancellation, Buyer, as its sole remedy, may recover from ALTEN as damages the difference between cost of procurement from another source (cover) and the contract price, less expenses saved as a consequence of ALTEN's breach. In no event shall these damages exceed ten percent (10%) of ALTEN's product price multiplied by the number of products unconditionally (not subject to cancellation under 6(a)) ordered by Buyer which remain unshipped at the time of cancellation.

(c) ALTEN's Cancellation: ALTEN shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business. Any order that can be cancelled or rescheduled by Buyer pursuant to paragraph 6(a) may be cancelled or rescheduled by ALTEN if notice is given to Buyer.

## 7. LIMITED WARRANTY

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to ALTEN's published specifications or other specifications accepted in writing by ALTEN for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification or which have been soldered or altered such that they are not capable of being tested under normal test conditions. ALTEN shall make the final determination as to whether its products are defective. ALTEN's sole obligation for products failing to comply

with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product where, within fourteen (14) days of the expiration of the warranty period, (i) ALTEN has received written notice of any nonconformity; (ii) after ALTEN's written authorization, Buyer has returned the nonconforming product to ALTEN; and (iii) ALTEN has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALTEN DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party purchaser of ALTEN products.

## **8. LIMITED LIABILITY**

Neither ALTEN nor Buyer shall be liable for incidental or consequential damages, including but not limited to, the cost of labor, requalification's, rework charges, delay, lost profits, or loss of goodwill arising out of the sale, installation or use of any ALTEN product. If ALTEN has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of ALTEN to Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the products or services that are the subject of the contract.

## **9. PATENTS**

(a) Indemnification: Subject to the limitations herein, ALTEN will defend any suit or proceeding brought against Buyer if it is based on a claim that any product furnished hereunder constitutes an infringement of any U.S., Canadian, Japanese, EU or EFTA member country intellectual property rights. ALTEN must be notified promptly in writing and given full and complete authority, information and assistance (at ALTEN's expense) for defense of the suit. ALTEN will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without its consent. In no event shall ALTEN's liability for such damages and costs (including legal costs) exceed the contractual value of the products or services that are the subject of the lawsuit. In providing such defense, or in the event that such product is held to constitute infringement and the use of the product is enjoined, ALTEN, in its discretion, shall procure the right to continue using such product, or modify it so that it becomes non-infringing, or remove it and grant Buyer a credit for the depreciated value thereof. ALTEN's indemnity does not extend to claims of infringement arising from ALTEN's compliance with Buyer's design, specifications and/or instructions, or use of any product in combination with other products or in connection with a manufacturing or other process. The foregoing remedy is exclusive and constitutes ALTEN's sole obligation for any claim of intellectual property infringement and ALTEN makes no warranty that products sold hereunder will not infringe any intellectual property rights.

(b) ALTEN Retains its Intellectual Property: The sale of any products hereunder does not convey any license by implication, estoppels or otherwise covering combinations of the products with other equipment data or programs. The company retains the copyright in all documents, catalogues and plans supplied to Buyer pursuant to or ancillary to the contract. Unless otherwise agreed in writing, Buyer shall obtain no interest in any mask or other tooling used in the production of any ALTEN product.

## **10. LIFE SUPPORT**

ALTEN's products are not authorized for use as critical components in life support devices or systems without the express written approval of an officer of ALTEN Semiconductor Corporation. As used herein: (a) Life support devices or systems are devices which (i) are intended for surgical implant into the body, or (ii) directly support or sustain life and whose failure to perform when properly used can be reasonably expected to result in significant injury to the user; (b) a critical component is any component in a life support device or system whose failure to

perform can be reasonably expected to cause the failure of the life support device or system or to affect its safety or effectiveness.

#### **11. CONFIDENTIAL INFORMATION**

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other is reasonably known to be confidential.

#### **12. FORCE MAJEURE**

Fairchild shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of ALTEN. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

#### **13. EXPORT REGULATIONS**

Buyer agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, Buyer agrees to comply with the Export Administration Regulations of the United States in so far as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

#### **14. ASSIGNMENT AND SUBCONTRACTING**

ALTEN shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

#### **15. NOTICES**

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to ALTEN shall be sent to ALTEN Battery Chargers Inc., Attn: Legal Dept., 7058 Portal Way, Suite 115, Building J2, Ferndale, WA, 98248

#### **16. WAIVER**

Failure by ALTEN to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

#### **17. APPLICABLE LAW**

Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the State of Washington, USA.