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Electronics Design, Contract Manufacturing and Control Products

Terms and Conditions

1. PLEASE READ THIS AGREEMENT CAREFULLY. IT CONTAINS THE TERMS AND CONDITIONS OF SALE THAT APPLY TO THE PURCHASE OF PRODUCTS FROM DIVELBISS CORPORATION ("THE COMPANY"). ANY DIFFERENT OR ADDITIONAL TERMS SET FORTH IN CUSTOMER'S PURCHASE ORDER OR SIMILAR COMMUNICATION ARE OBJECTED TO AND SHALL NOT BE BINDING ON THE COMPANY UNLESS A SEPARATE AGREEMENT HAS BEEN SIGNED BY AN AUTHORIZED OFFICER OF THE COMPANY. BY PLACING AN ORDER FOR PRODUCTS FROM THE COMPANY, OR BY ACCEPTING DELIVERY OF THE PRODUCTS DESCRIBED ON THE APPLICABLE PACKING SLIP, BILL OF LADING AND/OR INVOICE RECEIVED WITH THE PRODUCTS, YOU AGREE TO BE BOUND BY AND ACCEPT THESE TERMS AND CONDITIONS OF SALE.
2. **AVAILABILITY AND PRICING:** Product listings, specifications, availability, and pricing listed in any Company publication (including product catalogs, brochures and the Company's internet website) and charges discussed herein are in U.S. dollars are subject to change without notice. Prices charged will be those prevailing when an order is placed. For scheduled deliveries over 180 days beyond the order date and for deliveries over 30 days beyond the scheduled delivery date, the Company reserves the right to charge the Customer the price of the products at shipment if higher. Orders are not binding upon the Company until accepted by an authorized representative of the Company. Some products may not be available for shipment outside the United States. The Company reserves the right to refuse service, terminate accounts or cancel orders in its sole discretion. The Company may also change or modify these Terms and Conditions of Sale from time to time without notice. Prices shown herein reflect the latest information available at the time of the printing or electronic uploading of a publication. The Company's quoted prices do not reflect the cost of accommodating Customer's purchases via credit card or any third-party procurement services, software or e-commerce providers and the Company may accordingly pass through the additional charges incurred as a result of Customer's use of such purchasing methods. Prices shown do not include any Federal, State or local taxes or any present or future sales, use, excise, value-added or similar taxes. Where applicable, such taxes shall be billed as a separate item and paid by the Customer. Orders are accepted with the understanding that such taxes will be added, as required by law. The Company charges local sales tax, where applicable, unless Customer has a valid sales tax exemption certificate on file with the Company. The Customer shall pay any duties, levies, taxes, brokerage fees or customs fees imposed in the Customer's country to shipments made under these Terms and Conditions of Sale.
3. **PACKAGING:** Packaging for commercial shipment is included in the quoted price. When special or export packaging specified involving a greater expense than the cost of commercial shipment included in the quoted price, a charge will be made to cover such extra expense. Reasonable care is exercised in packaging goods for shipment and no responsibility is assumed by The Company for delay, breakage, or damage after having made delivery to the carrier. All claims for breakage or damage shall be made to the carrier. However, The Company will render reasonable assistance in securing satisfactory adjustment of such claims.

4. **PAYMENT TERMS:** Standard payment terms are Net Due, Upon Delivery unless a Customer opens a credit account. Standard payment terms for credit accounts are 2% 10 / Net 30 days. All payments are due without any deductions or setoffs without prior approval of the Company. The Company will take payment on all non-website orders by company check, C.O.D., electronic funds transfer or credit card. Company website orders can only be paid by credit card. The Customer shall pay the Company all costs incurred by it in collecting any past due account from the Customer, including all court costs and attorney's fees, provided, however, if the foregoing charges exceed that rate which may be lawfully charged under applicable law, then such charges shall be calculated so as not to exceed the lawful rate. The Company reserves the right to add a \$30.00 service charge on all returned checks.
5. **OPEN ACCOUNTS/CUSTOMER'S FINANCIAL CONDITION:** A Customer that desires to open a credit account must furnish such information as requested by the Company. The Company reserves the right in its absolute discretion to grant, refuse or discontinue any extensions of credit, or reduce or suspend any credit limit at any time. Company also reserves the right to cancel any order, require payment in advance, or require the Customer to provide adequate assurance of performance, without any liability by the Company, in the event of the Customer's insolvency, filing of a petition in bankruptcy, the appointment of a receiver or trustee for Customer, or the execution by Customer of an assignment for the benefit of creditors.
6. **C.O.D.S:** If your C.O.D. order total is over \$10,000.00 you must pay with a certified check, money order, or cashier's check. For orders of \$10,000.00 or less, please contact your Company sales representative for payment options. C.O.D. orders are not accepted on the Company's website.
7. **CREDIT CARDS:** We accept credit and procurement cards from American Express®, MasterCard®, VISA®.
8. **RETURNS:** Permission for return of products must first be secured from the Company by obtaining a Return Material Authorization number. Products returned without a Return Material Authorization number will not be accepted. All Return Material Authorizations are conditional and are not final until the product is received and inspected by the Company. Credit will be issued at the original price charged less handling and transportation charges, where applicable. Returns may be subject to a minimum 15% restocking charge. All claims for shortages must be made within 72 hours of receipt of product.
9. **CANCELLATIONS:** No cancellations or reschedules will be accepted within thirty (30) days of the earliest requested ship date. All cancellations and reschedules of orders by the Customer between thirty-one (31) and eighty-nine (89) days prior to the earliest requested ship date may result in a charge to Customer to be reasonably determined by the Company based on such factors as whether the product was manufactured specifically for the Customer, the Company's ability to change its production schedule within the period of the notice provided by the Customer, whether the Company acquired or allocated particular supplies or equipment to meet the Customer's order, etc.
10. **INTERNATIONAL ORDERS:** The minimum export order is \$250.00. Export orders requiring special handling, packaging, and documentation are subject to additional charges. Export orders are accepted on the basis of payment in advance of shipment by a check in U.S. funds, wire transfer, international money order, credit card, or acceptable letter of credit. Prices are FCA Company Warehouse in accordance with Incoterms 2000 and do not include insurance, freight, brokerage, duty or taxes.
11. **EXPORT CONTROLS:** Products purchased or received under these Terms and Conditions of Sale are subject to export control laws, restrictions, regulations and orders of the United States. The

Customer agrees to comply with all applicable export laws, restrictions and regulations of the United States or foreign agencies or authorities, and shall not export, or transfer for the purpose of re-export, any product to any prohibited or embargoed country or to any denied, blocked, or designated person or entity as mentioned in any such United States or foreign law or regulation. The Customer represents and warrants that it is not on the Denied Persons, Specially Designated Nationals or Debarred Persons List and is not otherwise prohibited by law from purchasing the products or services hereunder. The Customer shall be responsible to obtain any license to export, re-export or import as may be required.

12. **SHIPPING & HANDLING/DELIVERY:** All U.S. domestic shipments are FCA Shipping Point in accordance with Incoterms 2000 and in all cases title shall pass upon delivery to the carrier at point of shipment and thereafter all risk of loss or damage shall be upon the Customer (without regard to which party pays for the shipping costs). Company and carrier handling charges apply, Next Day and Second Day Air Service is available within the 48 contiguous states, Alaska, Hawaii, and Puerto Rico. Delivery dates provided in advance are estimates only and shall not represent fixed or guaranteed delivery dates. Export shipments are on the basis of FCA Company Warehouse in accordance with Incoterms 2000, with the Company charging separately for the costs, insurance, and freight to bring the products to the named place of destination. The Customer understands that any delivery schedule set forth herein or in any subsequent order or release is estimated only and is presented in good faith by The Company. The Company will use commercially reasonable efforts to initiate shipment and schedule delivery as close as possible to the Customer's requested delivery schedule but shall not be liable to the Customer for failure to meet any delivery schedule or for the costs or procurement of substitute goods. The Company reserves the right to make deliveries in installments. Delivery of a quantity that varies from the quantity specified in the Customer's order shall not relieve the Customer of its obligation to accept delivery and pay for the goods ordered. Delays or changes in schedules due to Customer directed actions are subject to price adjustments.
13. **NON-WAIVER DEFAULT:** Each shipment made under any order shall be treated as a separate sale and transaction, but in the event of any default by the Customer, if the Company elects to continue to make shipment, its action shall not constitute a waiver of any default by the Customer or in any way affect the Company's legal remedies for any such default.
14. **HAZARDOUS APPLICATIONS PROHIBITED:** THE COMPANY'S PRODUCTS ARE NOT RECOMMENDED OR AUTHORIZED FOR SAFETY, LIFE SUPPORT, SURGICAL IMPLANT, NUCLEAR, MILITARY OR COMMERCIAL AIRCRAFT APPLICATIONS, OR FOR ANY USE OR APPLICATION IN WHICH THE FAILURE OF A SINGLE COMPONENT COULD CAUSE SUBSTANTIAL HARM TO PERSONS OR PROPERTY. The Customer assumes all risk and liability for use in such applications and agrees to indemnify the Company for all damages that may be incurred due to use of the Company's products in these prohibited applications.
15. **WARRANTY & LIMITATION OF LIABILITY:** The Company warrants to the Customer that goods sold hereunder that are standard products of the Company will conform to the applicable Company's Specifications and be free from defects caused by defective material and faulty workmanship for a period of one (1) year from date of shipment to the Customer. For goods that are not standard products of the Company, such as developmental or custom-designed goods, the Company warrants to the Customer that such goods delivered hereunder will conform to solely the applicable datasheet specifications accepted by the Company and be free of defects in material and faulty workmanship for a period of one (1) year from date of shipment to the Customer. "Specification" as used herein shall mean the guaranteed minimum and maximum levels set forth in the Company's published datasheets or applicable datasheet specifications accepted by the Company in effect at time of sale. The Company further warrants that at time of delivery, the Company has free and clear title to the goods without liens and encumbrances. THE COMPANY

MAKES NO WARRANTY OR GUARANTEE WHATSOEVER WITH RESPECT TO SALES OR ORDERS FOR NONSTANDARD, SUB-GRADE GOODS OR PURCHASES THROUGH UNAUTHORIZED SALES CHANNELS. GOODS SOLD UNDER SUCH SALES OR ORDERS ARE FURNISHED "AS IS" AND "WITH ALL FAULTS." The Company's sole and maximum liability for breach of its warranties herein is limited to the obligation, at the Company's sole discretion to re-screen, reprocess or provide replacement goods, or at the Company's discretion credit the Customer's account, any goods delivered hereunder which either become defective or fail to meet the applicable specifications during the warranty period and which are found by the Company to be defective under the terms of this warranty, provided that (a) the Company is notified in writing by the Customer within thirty (30) days after discovery of defects or failure to meet the Specifications; (b) the Customer obtains a Return Material Authorization number from Company prior to returning any defective goods to the Company; (c) the defective goods are returned to the Company, transportation charges prepaid by the Customer (provided, however, that if upon examination by the Company, it determines that the goods are entitled to this warranty, then the Company shall be responsible for all transportation charges to and from the Company's facility); (d) the defective goods are received by the Company for adjustment no later than four (4) weeks following the last day of the warranty period; and (e) the Company's examination of such goods shall disclose that such defects or failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, damage by rain, fire or casualty or by accident or negligence in use, storage, transportation or handling. In addition, the Company shall have no liability to the Customer to the extent such failure is caused by non-compatibility with other components used by the Customer. In the event that any one or more of the foregoing conditions is not satisfied, the Company shall have no liability under this warranty whatsoever. The Customer has an obligation to mitigate any damages related to integration of defective or non-conforming Parts. If the Customer has knowledge that such Parts are defective or non-conforming or the Company has advised the Customer that Parts are defective or non-conforming and in either event the Customer integrates such defective Parts, the Company shall have no liability to the Customer for any damages incurred by the Customer as a result. In the event that the foregoing exclusive remedy under this warranty is determined upon judicial review to have failed in its essential purpose through no fault of the Customer, the alternate exclusive remedy shall be the refund of the purchase price of the non-conforming or defective goods. Any repairs to or alterations on the goods shipped hereunder must be authorized in writing by the Company to prevent voiding the Company's warranty. The Company's goods may be prohibited for shipment to certain countries, entities or individuals under U.S. export regulations. The Company is not liable to the Customer for any delays or failure to obtain the necessary export license. THE COMPANY'S OBLIGATION TO HONOR THESE WARRANTIES IS CONTINGENT UPON THE COMPANY'S RECEIPT OF PAYMENT IN FULL FOR THE GOODS ENTITLED TO THIS WARRANTY. THE COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY HAS NOT AUTHORIZED ANYONE TO MAKE ANY REPRESENTATION OR WARRANTY OTHER THAN AS PROVIDED ABOVE. THE FOREGOING STATES THE ENTIRE WARRANTY LIABILITY OF THE COMPANY.

16. **PUBLICATION DESCRIPTIONS:** All specifications, drawings and particulars of weights, dimensions, capacity or other details contained in the Company's publication(s), both printed and electronic, are intended to give a general description of the products only and will not be part of this Agreement other than as applicable to the Company's Warranties and Limitations of Liability.
17. **INTELLECTUAL PROPERTY RIGHTS:** The products offered for sale by the Company may be subject to patent, trademark, copyright, design and other rights of third parties. The Company shall in no event whatsoever be responsible or liable in the event of any claim of infringement of any such rights.

The Company's entire catalogue(s) and website(s), including without limitation, the content of the catalogue(s) and website(s) is copyrighted as a collective work under United States laws and applicable international copyright laws and the Company owns the full copyright in its catalogue(s) and website(s), including without limitation in the selection, coordination, arrangement and enhancement of the content contained therein.

Except as stated below, none of the materials in the Company's catalogue(s) or on its website(s) may be reproduced, distributed, republished, downloaded, copied in any form or by any means, displayed, posted, transmitted, modified, translated, added to, updated, compiled, or abridged without the prior written permission of the Company. Customer may download, store, print and copy selected portions of the content in the Company's catalogue(s) and website(s) provided Customer: (1) only uses the content downloaded, stored, or printed for furthering Customer's business with the Company; (2) does not publish or post any part of the content from the catalogue(s) or website(s) in any other catalogue or on any other Internet site; (3) does not publish or broadcast any part of the content from the catalogue(s) or website(s) in or on any other media; and (4) does not modify or alter the content from the catalogue(s) or website(s) in any way or delete or modify any copyright or trademark notice.

18. **FORCE MAJEURE:** The Company shall not be liable for loss or damage caused by any delay or failure to perform resulting in whole or in part from Acts of God, severe weather conditions, labor disruptions, governmental decrees or controls, insurrections, war, risks, shortages, inability to procure or ship product or obtain permits and licenses, insolvency or other inability to perform by the manufacturer, delay in transportation, any other commercial impracticability and/or any circumstances beyond the control of the Company in its business operations.
19. **GOVERNING LAW:** This Agreement and any sales hereunder shall be governed by the laws of the State of Ohio without regard to conflicts of laws rules and venue shall be in the federal and state courts of Knox County, State of Ohio, United States of America. The parties expressly exclude the application of the 1980 United Nations Convention of Contracts for the International Sales of Goods, if otherwise applicable.
20. **DISPUTE RESOLUTION:** Actions by the Company for non-payment by the Customer of the purchase price of products sold by the Company, or for redress of other breaches by the Customer of these Terms and Conditions of Sale may be brought by the Company, at its option, before any U.S. or foreign judicial court of competent jurisdiction or at the Company's option, disputes between the Company and the Customer, including all claims for non-performance by the Company, shall be finally settled by arbitration in either Fredericktown or Columbus, Ohio, U.S.A. under the Commercial Rules of the American Arbitration Association, by a single arbitrator appointed in accordance with said Commercial Rules applying these Terms and Conditions of Sale and consistent provisions of the federal and state laws (except conflict of law rules) of the State of Ohio, U.S.A.
21. **SEVERABILITY:** If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision(s) shall be enforced to the fullest extent permitted by applicable law, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
22. **WAIVER:** The Company's failure to insist on performance of any term or condition contained in this Agreement, or failure to exercise any of the Company's rights hereunder, shall not constitute a waiver of any of the Company's rights or remedies under this Agreement.

23. **NO THIRD-PARTY BENEFIT:** The provisions set forth in these Terms and Conditions of Sale are for the sole benefit of the parties hereto, and confer no rights, benefits or claims upon any person or entity not a party hereto.
24. **INFRINGEMENT:** With respect to goods manufactured solely to the Company's designs and specifications, the Company shall defend any suit or proceeding brought against the Customer insofar as such suit or proceeding is based on a claim that any such goods furnished hereunder infringe any patent(s), copyright(s) or trademark(s), or for misappropriation or use of any trade secret(s), or for unfair competition, if the Company is notified promptly in writing of such suit or proceeding and is given full and complete authority, information and assistance by the Customer for such defense. The Company shall pay all damages and costs finally awarded against the Customer in any such suit or proceeding, but the Company shall not be responsible for any compromise thereof made by the Customer without the written consent of the Company. If infringement is alleged prior to the completion of delivery of the goods, the Company may decline to make further shipments without being in breach of any agreement. In the event that such goods are held in such suit or proceeding to be infringing and their use is enjoined, or if in the opinion of the Company such goods are likely to become the subject of a claim of infringement, the Company at its sole discretion and at its own expense, may either (a) procure for the Customer the right to continue using such goods; (b) modify such goods so that they become non-infringing; (c) replace such goods with non-infringing goods; or (d) accept the return of such goods, granting the Customer a refund or credit equal to the depreciated value. The Company's obligations hereunder shall not apply to any alleged infringement occurring after the Customer has received notice of such alleged infringement unless the Company thereafter gives to the Customer written consent for such continuing alleged infringement. Any provision herein to the contrary notwithstanding, the Company shall have no obligation to the Customer (to defend or make any payment to or for the Customer) for any infringement, misappropriation or misuse claimed by any third party or parties if any such claim arises, in whole or in part, (a) as a result of a modification of the goods not introduced or approved by the Company; or (b) as a result of the interconnection or use of the goods in combination with goods or other devices or with a manufacturing or other process; or (c) the use of the goods in other than an application recommended by the Company or (d) compliance with the Customer's design, specifications and/or instructions. If the Customer alleges intellectual property infringement against a third party pursuant to the Customer's intellectual property portfolio and as a result the alleged infringer cross claims against the Customer alleging among other things infringement by goods manufactured by the Company, the Company's liability for the resulting attorney fees and costs will be proportional to the extent to which the Company's goods, as opposed to third party goods, are found to have infringed third party intellectual property rights. With respect to goods manufactured to the Customer's designs or specifications, the Customer shall defend any suit or proceeding brought against the Company, either severally or jointly with the Customer, insofar as such suit or proceeding is based on a claim, that any such goods furnished hereunder infringe (either direct or contributory) any patent(s), copyright(s), or trademark(s), or for misappropriation or use of any trade secret(s) or for unfair competition, arising from (i) compliance with the Customer's designs, specifications, or instructions; (ii) the use of any item or any part thereof, furnished hereunder, in combination with goods not supplied by the Company, or (iii) in connection with a manufacturing or other process utilizing any item, or part thereof, furnished hereunder. The Company shall notify the Customer promptly in writing of such suit or proceeding and give the Customer full and complete authority, information and assistance for such defense. The Customer shall pay all damages and costs finally awarded against the Company in any such suit or proceeding, but the Customer shall not be responsible for any compromise thereof made by the Company without the written consent of the Customer. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT THERETO.

25. **LICENSED SOFTWARE AND FIRMWARE:** Use of Products comprised of software or firmware may be subject to Customer's acceptance of additional terms and conditions set forth in separate the Company or third-party license agreements that will control to the extent necessary to resolve any conflict with the terms and conditions stated or otherwise referenced herein. In the absence of a separate Company's license agreement, the customer is granted a non-exclusive, non-transferable license to use provided Company's software or firmware only in object code form and solely in conjunction with Company-provided Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.
26. **PROPRIETARY DATA:** The Customer agrees not to use or disclose drawings, specifications, technical information or other data furnished by the Company and identified by the Company as confidential or proprietary data without the prior written consent of the Company. The Customer agrees and acknowledges that any improvement or modification to such confidential or proprietary data shall be the sole property of the Company, regardless of whether any such improvement or modification was the creation of the Customer. The Customer further agrees to use all appropriate copyright and proprietary notices on all goods delivered hereunder regardless of their intended use. The Customer recognizes that such proprietary data is unique and consents to the remedy of injunction in addition to damages for violation of the terms of this provision.
27. **TOOLING:** Unless otherwise expressly agreed in writing, The Company shall retain rights and title to and possession of any tooling, drawings, mask sets, tapes, fixtures, original documentation and intellectual property used in the furnishing of goods.
28. **GENERAL:** In the event of the appointment of a trustee, receiver, or liquidator for all or a portion of the Customer's property, the Customer's insolvency, or any voluntary or involuntary petition in bankruptcy by or against the Customer, the Company may terminate any order without further obligation or liability of the Company to the Customer. In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.