

## TERMS OF SALE

Focal Technologies Corporation  
Revision S (8/17/18)

Focal Technologies Corporation, a subsidiary of Moog Inc., hereinafter referred to as Seller, hereby offers to supply the items and/or services identified in the quotation, proposal, or acknowledgment expressly conditional upon the Buyer's acceptance of the following terms. Seller, by its commencement of performance, shall not prejudice its rights to enforcement of these conditions.

**1. ACCEPTANCE OF ORDER:** None of Buyer's Terms and Conditions shall alter Seller's Terms and Conditions in any respect and shall not apply to this transaction unless specifically agreed to in writing on the face of Seller's sales contract form. Any Buyer terms or purchase order shall be considered only as an offer not binding on Seller unless accepted expressly in the manner prescribed in the preceding sentence notwithstanding a failure of Seller to expressly reject any such offer including commencement of performance by Seller while such offer is outstanding.

**2. EXPIRATION OF OFFER:** All offers of sale by Seller are firm for thirty (30) days from the date of the offer unless otherwise specifically stated in the Seller's offer or as otherwise may be expressly agreed to in writing by the Seller. All such offers of Seller are subject to change without notice after this period unless earlier withdrawn by the Seller.

### **3. RESERVED**

**4. SHIPMENTS:** All supplies and services are sold Ex Works (Incoterms 2000), the point of origin shall be that of Seller's factories or locations identified in its proposal or sales contract form. Seller assumes no responsibility for delay, breakage, damage or loss after delivery to the carrier. Seller reserves the right to make partial shipments at its discretion. Title shall transfer when supplies are delivered to the main carrier.

**5. BUYER REPRESENTATIVE:** Buyer shall designate in writing a person to act as Buyer's representative with respect to the work to be performed hereunder. Such person shall have complete authority to transmit instructions, receive information, interpret and define owners' policies and decisions and to inspect and finally accept the items to be delivered or installed under this order.

**6. BUYER'S OBLIGATION OF ASSISTANCE:** Except to the extent Seller has otherwise assumed such responsibility for itself under express provisions of the Sales Order Acknowledgment Buyer shall:

a) place at Seller's disposal all information necessary for performance of the work including any plans, plant layout, wiring instructions and operational information that may reasonably be expected to affect the performance of the work. This includes to the extent reasonable previous studies or reports and other data relative to the design, installation and selection of equipment for the work to be performed by Seller.

b) Buyer guarantees access to and to make all reasonable provisions for Seller to enter on its property and other public and private lands as is required for performance of the work including safe storage of equipment, materials and tools during the process of any such off-site work.

c) Buyer agrees to cooperate in all reasonable ways necessary to Seller's performance of the work.

d) Buyer covenants that it has disclosed fully and accurately to Seller all general and local conditions which can affect performance of the work prescribed hereunder or the price thereof. Buyer acknowledges that Seller is entitled to rely on information furnished by Buyer in developing its specifications, equipment selection, price and other terms of this order.

**7. PAYMENT TERMS:** Terms are "net thirty (30) days" calculated from the date of receipt of invoice if credit arrangements have been approved in advance by Seller and such terms are included on the Seller's sales contract form. Otherwise, payment is required before shipment or delivery in a form and arrangement acceptable to Seller. In addition to any other rights or remedies available to seller, failure to pay the amount(s) due within the time specified will result in a late charge of one and one half (1-1/2%) percent per month to Buyer's account until final payment.

### **8. RESERVED**

**9. DELIVERY:** The prices quoted are for the delivery dates provided on the Seller's sales contract form or proposal. While the Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable written request for acceleration or deceleration made at least sixty/thirty (60/30) days respectively prior to scheduled delivery. Such changes may or may not be accepted by Seller at its sole discretion. In the event Seller accepts such changes, Seller shall be under no obligation to comply therewith until a price adjustment acceptable to Seller is negotiated between the parties and evidenced by an amendment to this order.

**10. EXPORT REGULATIONS:** Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the export regulations of the United States and Canada. Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed by Seller.

**11. CANCELLATION:** In the event of cancellation of this order for breach of the provisions hereof by Buyer, Seller shall have no further liability to Buyer and Seller shall not be liable for any costs of cancellation, special, incidental or consequential damages (including punitive or exemplary damages) for any cause or of any nature whatsoever and such cancellation shall be in addition to any other rights and remedies of Seller under this order or at law. Further, Seller reserves the right to cancel this order or any portion thereof without liability if Buyer fails to make payment as required by the terms of this order or if Buyer is adjudicated bankrupt, files a petition in bankruptcy, makes an assignment for the benefit of creditors or if action under any law for the relief of debtors is taken.

Further, if this order is accepted under a U.S. or Canadian government contract it may be terminated only for the convenience of the U.S. or Canadian Government in accordance with applicable federal procurement laws and regulations which shall govern the rights and obligations of the parties in any such termination.

**12. PATENT INFRINGEMENT:** To the extent that the items ordered are manufactured to designs, drawings, specifications or instructions furnished by Buyer, Buyer guarantees that the manufacture and sale or use of such items will not infringe upon any U.S., Canadian or foreign patents. Buyer further agrees to indemnify and hold harmless the Seller from any expense, loss, cost, damage or liability of any kind which may be incurred because of any such infringement or alleged infringement of patent rights with respect to such items and to defend, at its own cost and expense, any action or claim in which such infringement is alleged. Buyer shall promptly notify Seller of any such action and shall provide Seller an opportunity, at Seller's option, to participate in any defense of such action or claim at Seller's own expense.

Seller shall hold Buyer harmless from costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Seller-manufactured item, provided Seller shall be given timely written notice of such suit and the option to replace the same, obtain a license, make other arrangements to avoid litigation or to defend the suit. No indemnification is offered for alleged infringement arising from the use of Seller's items in combination with other items supplied by Buyer or from compliance with drawings, specifications or instructions furnished by Buyer as described in the paragraph above. Further, no indemnification by Seller applies if this order is accepted under a U.S. government contract containing an Authorization and Consent Clause applicable hereto as prescribed by federal procurement laws and regulations.

**13. PROPERTY OF SELLER:** All designs, inventions (whether or not patented), processes, technical data, drawings, plans and/or confidential information related to the items or services to be purchased, not furnished by Buyer, are the exclusive property of Seller, and all rights, title and interest in and to such properties shall remain exclusively in Seller notwithstanding Seller's disclosure of any part thereof to Buyer or Buyer's payment to Seller for engineering or nonrecurring charges. Buyer shall not use or disclose such property to any third party or any one not having a need to know, including employees, without the prior written consent of Seller. Title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item under any order, shall remain with Seller. Further, Seller does not agree to submit to Buyer as a result of the Consideration paid under this order, any information, technical data or drawings which are proprietary to Seller; nor does Seller agree to grant to Buyer any patent rights, title or license without Seller's expressed prior written consent.

**14. EQUIPMENT WARRANTIES AND REMEDY:** Seller warrants the products manufactured by it to be free from defects in material and workmanship only. The extent of Seller's obligation hereunder is to either repair or replace its work or the defective products at Seller's sole discretion, if returned within 24\* months after date of delivery. Cost of returning the product to Seller shall be at Buyer's expense. No allowance will be granted for repairs or alterations made by Buyer without Seller's written approval. The warranty, including removal or installation of product, shall not be construed to cover the cost of any work done by Buyer on material furnished by Seller. This warranty does not apply to any product that has been misused, altered or damaged by accident or abnormal conditions of operation and handling. This warranty does not apply to seals and other parts subject to wear and conditions of service. Products and parts not manufactured by Seller, including but not limited to connectors, cable glands, cables, shaft encoders, heaters, temperature sensors and terminal blocks, are warranted only to the extent and in the manner that the same are warranted to Seller by Seller's vendors and then only to the extent Seller is able to enforce such warranty. There is no other warranty, expressed or implied in fact or by law.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE WARRANTY OF SELLER. THE WARRANTIES STATED IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR VERBAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, WHICH ARE HEREBY DISCLAIMED.

Seller's agreement to sell the products is made upon the condition and agreement that, with respect to the products, there have been no representations or undertakings made by or on behalf of Seller and Seller makes no guarantees or warranties, expressed or implied, in fact or in law, except as expressly stated above.

**Limitation of Liability.** Seller shall not be responsible, obligated, or liable for any injury or damage resulting from an application or use of its products, either singly or in combination with other products. SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY OR ANY OTHER CLAIM SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR RETURN OF THE PURCHASE PRICE, AT SELLER'S SOLE OPTION. SELLER SHALL NOT BE LIABLE FOR DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS OR ARISING OUT OF ACCEPTANCE OF THIS ORDER.

\* Warranty period is 12 months for the Multiplexer product line.

**15. RAW MATERIAL SURCHARGES:** The price for supplies containing precious metals, nonferrous metals, magnetic minerals, and/or alloys thereof shall be subject to application of surcharge(s) at time of shipment, based upon fluctuations in the market value of such raw materials.

**16. CONFIGURATION STATUS AND SUBSTITUTION OF MATERIALS:** If the purchase order referenced on this acknowledgment does not specify the revision level of applicable drawings and specifications, then "NRS" (No Revision Specified) shall be indicated next to the part number(s) on this acknowledgment. NRS shall be interpreted "same as last build" or latest revision in Seller Engineering files, whichever is the most recent revision. Seller reserves the right to make substitution of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

**17. LIMITATION OF LIABILITY:** Notwithstanding any other provisions hereof, Seller shall not under any circumstances be liable for any damages greater than the unit price of any item(s) sold hereunder with respect to which any claim is made, including all costs and expenses and attorney fees, special, incidental or consequential damages of any nature whatsoever whether arising from Seller's breach of contract, or breach of expressed or implied warranty, arising in tort, at law or in equity, or any law giving rise to a claim of strict liability or for any other cause.

**18. COMPLIANCE WITH LAW:** Buyer shall comply with all applicable Federal, Provincial and local laws of the U.S. and Canada.

**19. INSURANCE:** Buyer shall maintain its usual and customary insurance coverage for automobile, worker's compensation and third party liability claims during performance of this order and, if requested by Seller, name Seller an insured under its third party liability coverage.

**20. NON-WAIVER:** The failure of Seller to enforce at any time any of the provisions of this order shall not constitute a waiver of such provisions or a waiver of the right of Seller to enforce any or all provisions. If any term or provisions of this order is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this order shall continue to be valid and binding upon the parties unless performance thereof is rendered legally impractical and no longer fulfills the intention of the parties under this order.

**21. APPLICABLE LAW AND FORUM FOR RESOLUTION OF DISPUTES:** This contract shall be deemed to have been made and performed in, and shall be construed, interpreted and the rights and obligations of the parties determined by the laws of the Province of Nova Scotia. All disputes that cannot be amicably resolved shall be decided by a court of competent jurisdiction located in Nova Scotia, Canada.

**22. ASSIGNMENT:** Except as otherwise expressly provided herein, no assignment of this order or Buyer's rights under this order shall be made by Buyer without the prior written agreement of the Seller. However, Seller may assign this order and its rights and obligations to any of its affiliates or subsidiaries in its sole discretion at any time and without additional consideration.

**23. FORCE MAJEURE:** In addition to other liability limitations herein contained neither party shall be responsible to the other for any loss or damage due to failure or delay in performance or delivery of any of the items or services required under this order when such delay or failure is due to causes beyond the failing or delaying party's reasonable control. Such causes shall include without limitation fires, floods, epidemics, quarantines, unusually severe weather, embargoes, wars, political strife, riots, delays in transportation, compliance with any regulation or directives of any national, provincial or local municipal government or authority and unforeseeable shortages in fuel, power, materials or labor.

**24. ORDER TERMS EXCLUSIVE:** Unless otherwise expressly agreed by both parties, this order constitutes the entire agreement between the parties concerning the subject matter of this order and the parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this order or any representations including the execution and delivery hereof except as specifically set forth herein.

**25. MODIFICATION:** These electronic terms and any subsequent order may not be modified except by written instrument executed by the parties with the same formality.

This acknowledgment confirms that Focal Technologies Corporation has entered your order for the item(s) listed on the reverse side hereof and acknowledgment is valid through manual or electronic signature authorized by Focal Technologies Corporation. If any information identified on the reverse side hereof is incorrect, please inform us in writing immediately.

**Thank you for your order!**

By \_\_\_\_\_ Date \_\_\_\_\_  
FOCAL TECHNOLOGIES CORPORATION,  
A SUBSIDIARY OF MOOG INC.

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