

TERMS and CONDITIONS of SALE

The following terms and conditions of sale will apply to any sale of products by Evans Capacitor Company (“Seller”), to an unrelated party (“Buyer”). The terms “purchase order” or “sales order” are documents detailing the purchase of products by “Buyer” from “Seller”. “Purchase Order” and “Sales Order” are synonymous for these terms and are herein referred to as “Orders”. Change Order is written documentation depicting a change in terms to an existing order.

1. Acknowledgments and Acceptance. Orders are not valid until confirmed by Seller. Confirmation may be either in writing to Buyer, or the performance under the terms of the order. All confirmed Orders are final. Seller must pre-approve any requested changes to delivery dates or quantities on any open Order. Due to build schedules or inventory requirements, Seller may deny any requested changes to purchase orders previously confirmed. Any approved changes must be affirmed by written Change Order document. Cancellation or reductions in quantities may result in surcharge. The acknowledgement of this order by the seller or commencement of any performance by the seller pursuant to this order shall constitute Buyer’s acceptance of the Seller’s terms and conditions and the prices set forth therein. Order is expressly conditioned upon the applicability of Seller’s terms and conditions exclusively. No terms or conditions stated by the purchaser shall be binding on the seller unless; the Seller expressly accepts such terms or conditions in writing. The failure of the Seller to specifically object to any or all the terms and conditions set forth herein and the purchaser, upon the acknowledgment of the quotation or upon Seller’s commencement of performance hereunder, shall be deemed to have withdrawn any such terms and conditions that conflict with, or are in addition to the terms and conditions set forth herein.

2. WARRANTY:

- a. Evans Capacitor Company warrants each new product sold by Evans Capacitor Company to be free from defects in material and workmanship under normal use and service. The obligation and liability of Seller under this warranty is limited to the repair or replacement at its factory, at the option of Seller, of any such product which proves defective within six (6) months after delivery to the first end user and is found to be defective in material and workmanship by Seller inspection and evaluation. Seller shall not be obligated or liable under this warranty for apparent defects which examination discloses are due to tampering, misuse, neglect, improper storage, normal wear and all cases where the products are assembled into a system, by the Buyer, or removed from an assembled condition. Products for warranty consideration shall be returned with all transportation charges prepaid to Seller, with prior RMA, adequately packaged to prevent loss or damage in shipment. Products repaired or replaced under this warranty are warranted for a new, full, warranty period.
- b. Other than the liability set forth in any expressed warranty applicable to the products sold to the Buyer, Seller shall not be liable for consequential, incidental or other type of damages and expressly excludes and disclaims such damages resulting from, or caused by, the use, operation, failure, malfunction or defects of any products sold to the Buyer under any order, it being understood that the products sold to the Buyer are not consumer products.
- c. SELLER DISCLAIMS ANY LIABILITY WHETHER UNDER THIS WARRANTY, OR OTHERWISE, FOR ANY FAILURE OF ITS PRODUCT WHICH IS CAUSED BY, IN WHOLE OR IN PART, THE USE IN, OR WITH COMPONENT PARTS NOT MANUFACTURED BY SELLER.
- d. THE TERMS OF THE APPLICABLE WARRANTY OR WARRANTIES, AS THE CASE MAY BE, AS SET FORTH ABOVE, ARE THE SOLE AND EXCLUSIVE WARRANTY TERMS THAT SHALL HAVE ANY FORCE AND EFFECT IN THIS ORDER, AND SUCH TERMS, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HERewith EXPRESSLY EXCLUDED.

3. Technical Specification. Unless otherwise provided for, all Orders must refer to an Evans Capacitor Part Number, and so state on the face of the Order. Buyer’s Part Numbers, which are assigned by the Buyer for convenience, may only be used in conjunction with the appropriate Evans Capacitor Part number. Buyer’s Part Numbers, which depict a controlled version of an Evans Capacitor Product, may only be used, where the Customer Source Controlled Drawing for that configuration has been reviewed and approved by Seller, and acknowledged by Order confirmation.

4. Deliveries. Delivery schedule is set at confirmation of Order. Any quoted delivery from Stock Inventory is subject to prior sale. Any purchase order with deliveries to a future schedule, must have all shipments complete within 12 months of TERMS and CONDITIONS of SALE (continued)

purchase order date. Changes to delivery schedule may result in surcharge. Anything to the contrary notwithstanding, the seller shall not be liable for any reasonable delay in production or delivery. In the event a delay in production or delivery occurs beyond a reasonable period of time, which delay is occasioned by fire, strikes civil or military authority, war, hostility, riots, government action, energy crises, the failure of seller's suppliers to make timely delivery of material or components, or where such delay is occasioned by other causes beyond the control of the seller or without its fault or negligence, then the date or dates for delivery of the equipment shall be extended for a period equal to the time lost by reason of any such delay.

5. Expedited Delivery. Deliveries that are expedited or requested prior to standard lead times or previously confirmed schedule are on a best efforts basis. Seller bears no responsibility or liability due to its inability to perform to any expedited delivery date.

6. Invoicing and Payment. Seller will provide payment terms in response to Purchase Order Request. Payment terms will be set by confirmation of Order. Orders must indicate agreed payment terms, in writing, on face of Order. Invoices will be prepared at time of shipment and delivered to Buyer according to Order instructions. In the event payments are not made in a timely manner Seller may either (1) declare Buyer's performance in breach and terminate any Buyer's Order, for default; (2) withhold future shipment under any Buyer's Order until delinquent payments are made; (3) deliver future shipments under any Buyer's Order on a C.O.D. or cash in advance basis even after the delinquency in payment is remedied; or (4) combine any of the above rights and remedies as is practicable and permitted by law. Nothing herein shall waive any other rights and remedies of seller permitted by law or set forth in any Order, and all rights and remedies set forth herein shall be considered cumulative and all other available rights and remedies.

7. Packaging and Shipping. All orders are packaged and boxed to prevent damage in shipment. ESD packaging is not used. All packages bear a packing slip on the outside of the package. Special packaging labels, bar codes, etc must be specified by, and clearly documented on Order, and affirmed by Seller's confirmation of Order.

8. FOB. Risk-of-Loss. All orders are FOB origin. Orders are shipped per Buyer's instructions provided on confirmed Order. If no instructions exist, U.S. shipments will be made by UPS ground, prepaid with charges added to Invoice. All export orders must use Buyer's freight charge number for all charges and duties.

9. Prices. Evans Capacitor maintains a price list internally. Prices for USA Orders are firm. Export pricing includes surcharge, and may be restricted in certain international territories, where seller's exclusive representative, or agent sets prices.

10. Exports. Seller's products are designated EAR 99 for export. Certain export restrictions apply. Seller requires completion of BIS-711 "Ultimate Consignee Declaration" prior to purchase order confirmation for any export order. Seller reserves the right to require completion of BIS-711 "Ultimate Consignee Declaration" prior to purchase order confirmation for any USA request, or Order, for determination of ultimate consignee and final destination of products. Seller may, in its sole discretion, deny any order, or request, based on Seller's assessment of documentation or information provided by Buyer.

11. Priority and Rated Orders. Seller continually performs on rated DOD orders. If necessary, rated orders must take precedence over non-rated orders.

12. NON-CANCELLABLE AND NON-RETURNABLE Unless otherwise expressly agreed to in writing by Seller, all items purchased shall be considered Non-cancellable and Non-returnable (NC/NR)