

## Standard Terms and Conditions of Sale

### Fuji Electric Corp. of America, AC Drives Department

**These Standard Terms and Conditions of Sale (“Terms and Conditions”) shall apply to and be incorporated by reference into Fuji Electric Corp. of America’s (“Seller”) quotations, purchase orders, and invoices regarding the sale of products, equipment, parts, materials, supplies, software, and other goods (“Products”) to buyer (“Buyer”). Seller’s agreement to sell any Products is expressly conditioned upon Buyer’s acceptance of these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless agreed to in writing by Seller. Further, by accepting any products hereunder, Buyer specifically waives any additional or different terms and conditions. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions shall not be binding on Seller.**

**1. Prices.** All prices are in U.S. dollars and include the cost of standard domestic packing in accordance with the standards of Seller or the applicable manufacturer. Unless otherwise specified herein, such prices do not include shipping or insurance charges. All prices are subject to change without notice.

**2. Quotations.** Written quotations are valid for 30 days from its date unless otherwise stated in the quotation. Verbal quotations expire the same day they are made.

**3. Taxes.** The price does not include any taxes, duties, or similar charges. Buyer shall be responsible for the payment of all applicable taxes, duties, and similar charges. The amount of any applicable taxes, duties, or similar charges may be added to each invoice or separately invoiced by Seller to Buyer.

**4. Minimum Order.** Orders of less than \$500.00 net per order will be charged a \$50.00 handling fee.

**5. Order Changes.** No changes can be made to orders after acceptance without written approval of Seller in its sole discretion. Items cannot be added after acceptance, and a new order must be placed.

**6. Terms of Payment.** Buyer shall pay all invoiced amounts within 30 days of the date of the invoice unless otherwise stated on the quotation or invoice. Credit Card payment requires Seller’s approval. All credit card orders will be charged a \$100 handling fee per order.

**7. Invoice.** Invoices will be sent by mail or e-mail.

**8. Delivery.** Estimated delivery schedule information on Seller’s website and estimated shipment dates on order acknowledgments are not Seller’s commitment or guaranty for delivery on a specified date, but are merely estimates that are dependent upon receipt of materials, components, finished goods, and available inventory. Seller will use reasonable efforts to fill all orders according to the agreed schedule and quantity but shall not be liable for failure to ship, or delays in shipment for any reason whatsoever, including, without limitation, by reason of strikes, fires, delays in Seller’s source of supply, transportation delays, or other causes. Further, failure to deliver by such dates shall not entitle Buyer to rescind or cancel orders or to receive compensation or damages of any kind. Delivery of products shall be EXW (Incoterms 2020) Seller’s facility, place of manufacture, or warehouse as designated on the quotation or order acknowledgment. If any Products cannot be shipped to or received by Buyer within 30 days after the scheduled shipment date due to any cause not attributable to Seller, Seller shall (a) give Buyer written notice requiring Buyer accept delivery within 10 days of such notice or (b) if Buyer fails to accept delivery by the deadline in (a), Seller shall have the right in its sole discretion to cancel Buyer’s order or the portion thereof that has not been shipped. If Seller elects to cancel the order, or portion thereof, under (b), Seller shall have no further liability to Buyer and may reallocate or sell such cancelled Products in Seller’s sole discretion.

**9. Packing.** Prices include standard domestic packing only. Additional or special packing costs required for export or pursuant to Buyer requirements will be charged to Buyer.

**10. Weight and Dimensions.** The weight and dimensions of Products described in Seller’s product catalogs are based on the best information available at the time of printing. As Seller follows a policy of continuous product

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improvement, design changes may make this information obsolete. Information on the website and catalog is subject to change without notice.

**11. Shipping Address.** Seller accepts one shipping address per order. No shipments can be made to a P.O. box.

**12. Shipping Costs.** All shipping costs shall be paid by Buyer unless otherwise specified on the quotation or order acknowledgement issued by Seller. Estimated shipping cost based on weight and destination will be added to the order.

**13. SAME DAY Shipment Request.** Orders requesting SAME DAY shipping must be received by 12:00 PM Eastern Time (9:00 AM Pacific Time) and must be shipped via next day delivery. Standard order processing time for Seller is 24 hours on Seller's normal business days. Seller may assess an additional fee for same day shipment processing and shipping method requested. The standard fee for same day processing is \$50 up to line item 10. Only overnight express shipping methods (i.e. UPS Red or FedEx Overnight) are allowed for same day shipping requests.

**14. Inspection of Products.** Buyer is responsible for inspecting Products upon receipt. All claims that Products delivered do not correspond in quantity or type to those itemized in the invoice must be made within ten (10) days of receipt of products.

**15. Returns.** Buyer must obtain prior return approval from Seller and receive an RMA number. The RMA number must be prominently displayed on the outside of all returned packages. All returns must be shipped **PREPAID** to Seller's warehouse located at 105 14th Street NW, Roanoke, VA 24017. All returns must be properly packaged to avoid damage en route to Seller's warehouse. Seller will not credit any items damaged in transit to Seller's warehouse. All returned products are considered to be in Buyer's possession until products are accepted and inspected by Seller. No payment deductions should be made until the returns are evaluated and accepted by Seller. After Seller's inspection, Seller will report the condition of Buyer's return and decide total credit amount. All returns must be in unused, unaltered, re-sellable condition, in their original package. The original cartons should not be damaged or defaced in any way. Any products Seller determines to be non-resalable will be returned to Buyer freight **COLLECT**, or disposed of at Buyer's request and at Buyer's expense. **Seller reserves the right to reject returned Products that have been issued RMA numbers but are returned by Buyer in non-resalable condition.** Seller only accepts the return of Products below within 30 days of invoice date with a 30% re-stocking fee. Products not listed below are not returnable. The following returnable Products list is subject to change without notice: Seller's standard Products only in unused, unaltered, re-sellable condition and in the original package. All "built-to-order" or custom Products are non-returnable and order cancellation is subject to a fee in the amount of 100% of the net order value.

**16. Cancellation of Orders.** Buyer must obtain prior cancellation approval in writing from Seller. Buyer may request cancellations of previously-placed orders in accordance with the policy set forth herein. Orders for same-day or next-day shipment may not be canceled. All cancellation requests require Seller's prior written approval. Seller will accept cancellations of the following Products with a \_\_\_% re-stocking fee. Products not listed below are not cancellable. The following cancellable Products list is subject to change without notice: Seller's standard Products only. **All "built-to-order" or custom Products are non-returnable and order cancellation is subject to a fee in the amount of 100% of the net order value.**

**17. Title and Risk of Loss.** Title to Products shall transfer to Buyer upon payment in full, and risk of loss or damage to Products shall pass to Buyer when the Products are picked up from Seller's facility, place of manufacture or warehouse.

**18. Limited Warranty.**

**18-1 Limited Warranty; Warranty Period.**

(1) Seller warrants to Buyer that, during the warranty period, Products shall conform the Seller's specifications and be shipped free from defects in materials, workmanship, and title. Any items not manufactured by Seller shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items.

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(2) The warranty period is 36 months from date of shipment from Seller.

(3) The warranty period for Products repaired by Seller's Service Department is 6 months from the date that repairs are completed by Seller.

### **18-2 Warranty Remedies and Conditions.**

(1) If Products do not meet the above warranties, Buyer shall promptly notify Seller in writing within ten days after discovery and within the warranty period and shall follow all reasonable instructions of Seller. Seller shall, with reasonable speed at Seller's option, repair or replace the defective Products. Seller shall have no liability for defects that arise after the warranty period has expired. If Products alleged by Buyer to not meet the above warranties are (i) not under warranty, (ii) determined not to be defective, or (iii) defective due to any cause or condition not covered under the warranties provided herein, Buyer agrees to reimburse Seller for all reasonable expenses incurred in traveling to the Buyer's site or in shipping, handling, or inspecting such Products.

(2) These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of Products and conformance with the proper operation instruction manuals provided by Seller or its suppliers or subcontractors, (b) Buyer keeping proper records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products performed only by Seller or a third party authorized by Seller in writing. Seller does not warrant Products or any repaired or replacement parts against normal wear and tear or damage caused by damage in transit, misuse, negligence, accident, or use against the advice of Seller. Any modification or repair of any Products not authorized by Seller shall render the warranty null and void. Without limiting the foregoing, if the following cases are applicable, this warranty will not apply.

1) The breakdown was caused by inappropriate installation, conditions, environment, handling, use methods (including frequency and time), etc. which are not specified in the catalog, operation manual, specification or other relevant documents provided by Seller.

2) The breakdown was caused or contributed to by goods or equipment other than the Product purchased or delivered by Seller, including Buyer's or a third party's goods, equipment, software, program, system, design, etc.

3) The breakdown was caused by modifications or repairs made by any party other than Seller or Seller's approved service provider.

4) The breakdown was caused by improper maintenance or replacement using consumables, etc. not specified in the operation manual or catalog, etc. provided by Seller.

5) The breakdown was caused by a chemical or technical problem that was not provided by Seller.

6) The Product was not used in the manner the Product was originally intended to be used by Seller.

7) The breakdown was caused by a reason which is not within Seller's control or responsibility, such as lightning or other event of force majeure.

**18-3 Trouble Diagnosis.** As a rule, Buyer is requested to carry out a preliminary trouble diagnosis. However, at Buyer's request, Seller or its service network can perform the trouble diagnosis on a chargeable basis. In this case, Buyer shall bear all charges levied in accordance with Seller's then-current fee schedule.

**18-4 Sole Remedy; Disclaimer.** Section 18 provides the exclusive remedies for all claims based on the failure of or defect in Products, whether the failure or defect arises before, during or after the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort, or extra contractual liability (including negligence), strict liability or otherwise. The warranties provided in Section 18 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. SELLER HEREBY DISCLAIMS (AND BY ACCEPTING THE PRODUCTS, BUYER HEREBY WAIVES) ANY AND ALL OTHER STATUTORY, EXPRESS OR IMPLIED WARRANTIES,

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REMEDIES OR CONDITIONS WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS, WARRANTIES OF NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, COMPLIANCE WITH ANY RULES OR PRACTICES ESTABLISHED UNDER APPLICABLE LAWS, REGULATIONS OR STANDARDS, OR ANY OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTY OF ANY KIND ARISING OUT OF THE SALE, DELIVERY, USE OR PERFORMANCE OF THE PRODUCTS OR ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

**18-5 Excluded Services and Costs.** This warranty does not include the cost of transferring or reapplying custom settings, adjustments, or programming, de-installation or re-installation of defective Products, or dispatching engineers or service costs. Upon request, Seller may be willing to provide these additional services can be discussed separately on a time and materials basis in accordance with Seller's then-current fee schedule.

**19. Force Majeure.** Seller shall not be liable nor in breach or default of its obligations hereunder to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, pandemics, quarantines, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, accidents, transportation or logistics shortages or delays, shortage of or inability to obtain materials or components, supplier or vendor non-performance, embargo, or government act. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and schedule adjustment.

**20. Limitation of Liability.** The total liability of Seller for all claims arising out of or relating to the performance or breach of these Terms and Conditions or any Products shall not exceed the final price under particular order under which the specific Products giving rise to the claim are supplied or performed. Seller's liability shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim that accrued prior to that date by commencing an action before the expiration of the applicable statute of limitations or repose, but not later than one year after the expiration of such warranty period. SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCT, LOSS OF USE OF PRODUCTS OR SERVICES OR ANY ASSOCIATED EQUIPMENT, LOSS OR INTERRUPTION OF BUSINESS, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, DAMAGE TO REPUTATION, COST OF CAPITAL, COST OF COVER OR REPLACEMENT, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED.

**21. Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller and its shareholders, directors, employees, agents, and affiliates from and against any and all claims, damages, losses, causes of action, demands, judgments and expenses (including, without limitation, consultant and expert expenses, court costs, and reasonable attorneys' fees) arising out of or relating to (a) Buyer's, or its employees', agents', contractors', or invitees', negligence; (b) any personal injury or property damage to Seller's personnel or property at Buyer's site; or (c) Buyer's breach of these Terms and Conditions.

**22. Governing Law.** These terms and conditions of sale shall be governed by and interpreted and construed in accordance with the law of the state of New York. Any claim, legal action or proceeding arising from or related to the Products or these Terms and Conditions must be brought in the U.S. District Court for the Southern District of New York, or in the event that such court lacks jurisdiction to hear the claim, in the appropriate state courts of New York County, New York, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. In the event of any legal action concerning or arising out of this Contract, the prevailing party shall be entitled to an award of attorney's fees and legal and accounting fees and costs, in addition to other relief.

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**23. Termination.** Seller shall have the right to suspend or terminate the order (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 19 above) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; (iv) Buyer materially fails to comply with any terms hereof, except for payment obligations, and fails to cure within 30 days after written notice thereof; or (v) Buyer fails or delays making any payment when due or fulfilling any payment conditions under any other contract between the parties and fails to cure within 5 days after written notice thereof.

**24. Miscellaneous.** Buyer may not assign its rights and obligations hereunder to any third party without Seller's written consent. If any provision hereof is found to be void or unenforceable, the remainder of the Terms and Conditions shall not be affected. The parties will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable. The order and these Terms and Conditions represent the entire agreement between the parties. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives.