



STANDARD TERMS & CONDITIONS OF SALE **ULTRACAPACITOR PRODUCTS**

The term "Maxwell", as used herein shall mean Maxwell Technologies, Inc. or Maxwell Technologies SA, as the case may be. The term "Buyer" shall mean the party placing the purchase order. No contractual relationship between Maxwell and Buyer shall arise until such time as Buyer has placed an order that has been accepted by Maxwell and such acceptance has been indicated on a written acknowledgement.

1. **Sale and Purchase.** All products purchased hereunder ("Products") from Maxwell are sold at the relevant prices specified herein ("Prices"), and are subject to the unqualified acceptance of these terms and conditions by Buyer. There shall be no force or effect to any different or additional general terms of any purchase order, confirmation or similar form even if signed by the parties after the date hereof. Provision of any Products to or on behalf of Buyer is conditioned on, and Buyer's order or taking delivery of or otherwise accepting, using, or distributing any Product shall constitute Buyer's assent to these Terms and Conditions ("Terms") to the exclusion of all other terms. If these Terms are considered an offer, acceptance is expressly limited to such Terms. Unless expressly stated otherwise, the prices contained in any quotation shall be valid for thirty (30) days following the date of the quotation. Buyer shall only use the Products sold to it by Maxwell in the manufacture of the products and final applications produced by Buyer utilizing the Products ("Finished Products") and may not resell any of the Products in bulk.

2. **Price, Payment and Delivery Terms.** Upon approved credit, all payments due hereunder to Maxwell shall be paid to Maxwell in US dollars or Swiss Francs, as the case may be, not later than thirty (30) days following the date of the applicable invoice. Late payments shall bear interest at the rate of one and one-half percent (1.5%) per month or, if lower, the maximum rate allowed by law. All Products are delivered Ex Works Maxwell's Selected Facility, as defined by Incoterms 2000. Maxwell shall use all reasonable efforts to deliver each of Buyer's orders for the Products on the date specified in the order, but the time of delivery shall not be of the essence. In no event shall Maxwell be liable for any loss, damage or penalty for delay in delivery or for failure to give notice of delay. In addition to the price, Buyer will pay all charges, including without limitation transportation charges, insurance premiums, and shall be responsible for all taxes (except Maxwell's income taxes), duties, costs of compliance with export and import controls and regulations, and other governmental assessments.

3. **Warranties.** Maxwell warrants to Buyer that the Products delivered hereunder, which are standard products of Maxwell, will conform to Maxwell's specification in effect at the time of shipment and be free of defects in material and workmanship for a period of one (1) year as measured from the date of shipment ("Warranty Period"). THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM THE COURSE OF PERFORMANCE, THE COURSE OF DEALING, OR THE USAGE OF TRADE, AND ALL OTHER WARRANTIES WHICH ARE HEREBY EXPRESSLY DISCLAIMED by Maxwell and waived by Buyer. Maxwell may repair or replace in its sole discretion any goods delivered hereunder which become defective or fail to meet the applicable specifications during the warranty period, conditioned upon the following: (a) Maxwell is notified in writing by Buyer within thirty (30) days after discovery of defects or failures to meet specification; (b) Buyer obtains a Return Material Authorization (RMA) number from Maxwell prior to returning any allegedly defective goods to Maxwell; (c) the allegedly defective Products are returned to Maxwell suitably packaged, transportation charges prepaid by Buyer; (d) the allegedly defective Products are received by Maxwell for adjustment no later than sixty (60) days following the issuance of valid RMA instructions and in no event later than four (4) weeks following the last day of the Warranty Period and (e) Maxwell's examination of such Products shall disclose to its satisfaction that such defects or failures have not been caused by misuse, abuse, neglect, improper installation or application, repair, alteration, accident or negligence in use, storage, transportation or handling. In the event that any one or more of the foregoing Conditions (a) through (e) is not satisfied, Maxwell shall have no liability under this warranty whatsoever. Any repair or alterations of the Products shipped hereunder must be authorized in writing by Maxwell to prevent voiding Maxwell's warranty. All claims by Buyer for damages not affecting the Product itself, such as, but not limited to, loss of use, loss of orders, loss of profits, claims by third parties or claims for indirect or consequential damages, irrespective of the legal basis for such claims, shall be excluded. NO EMPLOYEE OR REPRESENTATIVE OF MAXWELL IS AUTHORIZED TO MODIFY THIS WARRANTY FOR ANY PRODUCT.



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4. **Returns.** Buyer may return only those Products which fail to conform to the warranty set forth in Section 3. All other returns shall be subject to Maxwell's standard restocking policy and restocking fee.

5. **Indemnification.** Maxwell shall hold Buyer and its officers, directors, agents and employees harmless from liability resulting from infringement by the Products of any United States patent or copyright issued as of the date of this Agreement, provided Maxwell is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise; Maxwell will not be responsible for any settlement it does not approve in writing. The foregoing obligation of Maxwell does not apply with respect to Products or portions or components: (i) not supplied by Maxwell, (ii) made in whole or in part in accordance to Buyer specifications or requests, (iii) which are modified after shipment, if the alleged infringement relates to such modification, (iv) combined, processed or used with other products, processes or materials where the alleged infringement relates to such combination, process or use, (v) where Buyer continues allegedly infringing activities after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where the infringement is incident to use of the Product but does not result primarily from the Product and its intended application. Buyer will indemnify Maxwell and its officers, directors, agents and employees from all damages, settlements, attorneys' fees and expenses: (i) related to a claim of infringement or misappropriation excluded from Maxwell's indemnity obligation by the immediately preceding sentence or (ii) in connection with Buyer's activities regarding the Products or its failure to effectively pass on to its direct or indirect Buyers Maxwell's liability and warranty limitations and disclaimers.

6. **Software.** Any software incorporated into or provided for use in a Product is not sold, but rather is licensed solely for use in that Product. Such license is non-exclusive, non-sublicensable and does not include the right to (and Buyer will not) modify, reverse engineer (except to the extent applicable law prohibits reverse engineering restrictions), incorporate or use in any other works, create derivatives of, or copy any portion of such software, or to use the software or product for the benefit of any third party.

7. **Limited Liability.** EXCEPT FOR BODILY INJURY, MAXWELL WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE AMOUNTS PAID TO MAXWELL HEREUNDER DURING THE TWELVE MONTH PERIOD PRIOR TO DATE THE CAUSE OF ACTION AROSE, UNLESS DAMAGES RESULTED FROM GROSS NEGLIGENCE OR INTENT, OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. MAXWELL SHALL HAVE NO LIABILITY FOR ANY FAILURE OR

DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF PRODUCTS BETWEEN ITS BUYERS IN THE EVENT OF A SHORTAGE. BUYER FURTHER ACKNOWLEDGES THAT THE PRICING AND TERMS WOULD HAVE BEEN DIFFERENT IF THERE HAD BEEN A DIFFERENT ALLOCATION OF RISK.

8. **High Risk Activities; Indemnity.** The Products are not designed, manufactured, or intended for use in hazardous environments requiring fail-safe performance where the failure of the product could lead to death, personal injury, or significant physical or environmental damage ("High Risk Activities"). Use of the Products in High Risk Activities is not authorized, and Buyer shall indemnify and hold harmless, Maxwell and its affiliates and shareholders from any liability, damages, costs and expenses (including, without limitation, the costs and fees of attorneys' and other professionals) arising from or relating to any violation of Buyer's obligations under any of these Terms or any use of the Products by Buyer or any party obtaining use or exposure to the Products through Buyer.

9. **General.** All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. Buyer shall not have any right or ability to assign, transfer, or sublicense any obligation or benefit under this Agreement and any attempt to do so shall be void. Maxwell may assign this Agreement in whole or in part. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. This Agreement supersedes all proposals, oral or written, all negotiations, conversations, or discussions between or among parties relating to the subject matter of this Agreement and all past dealing or industry custom. No changes or modifications or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the principal place of business of the respective Maxwell business entity acting as a party to this Agreement, that is, the laws of the State of California or the laws of Switzerland, respectively, (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods). In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys fees.